

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

CASE NO. 3:17-cv-02278-X

CHARLENE CARTER,

Plaintiff,

v.

SOUTHWEST AIRLINES CO. and
TRANSPORT WORKERS OF AMERICA,
LOCAL 566,

Defendants.

TRANSCRIPT OF THE TRIAL
BEFORE THE HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

V O L U M E 6

Dallas, Texas

July 12, 2022

8:37 a.m.

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E X H I B I T S

Trial Exhibit 10	1658
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1 - P R O C E E D I N G S -

2 -O-

3 THE COURT SECURITY OFFICER: All rise.

4 THE COURT: You can have a seat.

5 Thank you.

6 Okay. So we are on -- what day is it?

7 Does anyone know what day of trial it is? Are we on
8 6? It might be Day 6 trial.

9 So let's go ahead and do appearances,
10 first for Carter.

11 MR. GILLIAM: For Carter, Matthew Gilliam,
12 Matt Hill and Bobby Pryor.

13 THE COURT: Thank you.

14 And Southwest.

15 MR. McKEEBY: For Southwest, Paulo McKeeby
16 and Brian Morris.

17 THE COURT: Okay. Thank you.

18 And for the Union.

19 MR. GREENFIELD: On behalf of the Union,
20 Adam Greenfield and Edward Cloutman III, along with
21 our corporate rep, Mike Massoni.

22 THE COURT: Thank you.

23 First I want to congratulate all of you
24 for clearing security downstairs. I heard it was an
25 absolute cluster today. So we will see when our

1 jury gets here. We could probably take bets if
2 y'all want to on when they will clear security. The
3 line is something to behold.

4 So thank y'all for being here. That is
5 impressive.

6 I guess I'll ask y'all what you wish to
7 talk about. The two things on my mind are exhibits.
8 I know we had timely designations and objections
9 last night I want to cover.

10 And then what I wanted to do is see if
11 there are any exhibit objections that we didn't get
12 to yesterday morning because we were talking about
13 the jury charge.

14 If we've got extra time, we can talk about
15 anything jury charge that we didn't get to yesterday
16 that's on y'all's minds. I know we covered a lot,
17 but we didn't cover everything that y'all put in
18 writing to me. So if anyone wants to take another
19 crack at me on something jury charge-wise, we should
20 cover that after exhibits.

21 And I just plan to do rounds like we
22 finished off doing yesterday where I'll ask Carter,
23 Southwest, Union, what's next that they want to talk
24 about.

25 What else should we cover other than

1 exhibits and any lingering charge thoughts from
2 yesterday morning's session?

3 MR. McKEEBY: I had a housekeeping matter.

4 I thought that Exhibit 36 was admitted and
5 published, but I see from the list that that may not
6 be the case. I don't think there is any objection
7 to me just publishing that in front of the jury. I
8 thought I had done so, but I guess maybe not.

9 THE COURT: Well, that could be on my end,
10 like I didn't publish one of yours yesterday. So it
11 could be my fault on 36.

12 So should we go ahead and do that first
13 thing when the jury gets in? Do you want to show 36
14 to them?

15 MR. McKEEBY: That's fine.

16 THE COURT: Okay. I will make a note of
17 that.

18 I know you had prepared the redactions.

19 Only -- for the Dropbox last night, I
20 could only upload 21-Q, or download 21-Q. So it may
21 have been user error on my end.

22 MR. HILL: Or user error my part. I send
23 Kevin a second link that had the full set.

24 THE COURT: Okay. I will make sure I
25 download that. I just want to make sure that I have

1 a complete copy of everything we need before we send
2 the jury back. Agreed that will probably be
3 tomorrow, not today, but I'm just trying to make
4 sure, as we land the plane, that we have everything
5 we need.

6 We have an electronic copy of 15A.
7 Remember that was the one where Stone marked with
8 yellow highlighter? It's 57 megabytes. So if
9 anyone wants it, we can get it to you, but it may
10 not go in your email.

11 What we will do is when we charge the jury
12 and send them back, we are going to have the final
13 list of exhibits that I give y'all that will cut off
14 everything we didn't introduce, and then we will
15 have the thumb drive and y'all can look and make
16 sure the right exhibits are on there.

17 So you can copy the thumb drive, make a
18 copy of the exhibits for yourself if you want to,
19 and that -- that's fine by me.

20 MR. PRYOR: Your Honor, in terms of what
21 you're sending, you're sending back a hard copy as
22 well?

23 THE COURT: So we have the hard copy
24 available if they ask, but we're sending back the
25 e-copy of every exhibit. The only hard copy they

1 will have of anything is each juror will have a hard
2 copy of the jury charge that includes the questions.

3 There is going to be the master copy that
4 the foreperson will keep that's the control copy,
5 and then there is one hard copy of the exhibit list.
6 All of the exhibits themselves are actually
7 electronic.

8 We still have that hard copy exhibit of
9 15A. If they ask for it at all, we can give it to
10 them.

11 MR. PRYOR: We would request that the hard
12 copies go back in bound index notebooks.

13 I understand flash drives and all of that,
14 but -- I think it's a little more user-friendly for
15 them to have the actual hard copy exhibits.

16 We will put them in a binder if the Court
17 doesn't object.

18 THE COURT: So any other thoughts from the
19 other side?

20 I don't have a problem with it. This is
21 sort of a relic of COVID. We had shifted to all
22 electronic back when people thought paper is what
23 transmits COVID, right? It got easier and cheaper,
24 and so people liked it.

25 But if you've got a hard copy and the

1 other side can see it and they are fine with the
2 actual substance of it, fine by us. 15A is our only
3 hard copy and we can make it available.

4 MR. PRYOR: And I'm saying we do. I have
5 them in front of me and I've got an extra set behind
6 me. I think we can put one together. If I'm wrong,
7 I'm sure --

8 THE COURT: Yeah. The only thing I try
9 not to send back are guns, drugs, cash, right? I
10 learned that lesson from a mentor judge who tried
11 El Chapo once. Yes. Wise lessons. Don't send back
12 the guns, drugs, or cash. But I don't think we have
13 any of that in this case. I think we are good.

14 So I have no problem with that. If you've
15 got a control copy and they approve of it, then we
16 will send back a laptop too. But we can send back
17 the binders and they will probably look at those
18 first.

19 Other questions, housekeeping-wise?

20 Okay. So let's jump into exhibits then.

21 I think I have the first objection we
22 should talk about as being Southwest designation of
23 number 50.

24 MR. McKEEBY: I can streamline this.

25 We will withdraw that one that's admitted

1 through other exhibits which I can use instead of
2 that one.

3 MR. PRYOR: Exhibit number?

4 THE COURT: Understood. That makes sense.

5 So 50 I'm going to note in my notes is
6 withdrawn.

7 I have 119 as Southwest designation that
8 Carter objects to, and that's a Step 2
9 documentation.

10 MR. GILLIAM: That's right, your Honor.

11 THE COURT: That was Mr. Gilliam?

12 MR. GILLIAM: Yes. I'm trying to reach
13 out here in the aisle.

14 THE COURT: The problem is when you move
15 to where I can see you, then the microphone can't
16 grab you.

17 MR. GILLIAM: Let me try this one.

18 THE COURT: I've got wheels, I can move.

19 Okay. So anything we want to talk about
20 on Step 2? I know we've generally covered Step 2,
21 but anything we want to talk about on this document?

22 MR. GILLIAM: We have. We just wanted to
23 make our objection.

24 THE COURT: I appreciate that.

25 So I will stick with my prior rulings. I

1 think Step 2 is admissible for those limited
2 purposes of mitigation, fair representation.

3 So I will acknowledge your objection. I
4 will overrule it on the record here and say that at
5 the point in time that it gets offered, I will just
6 plan on overruling morning objections and letting it
7 come in.

8 So those are the two Southwest documents
9 that there were objections to.

10 In the Union documents, the first one I
11 have an objection to is Number 3. This is the EEOC
12 charge as it pertains to the Union. I know the EEOC
13 charge came in yesterday, but the one for Southwest.

14 MR. GREENFIELD: Your Honor, we can move
15 on. I'm not going to dive into it.

16 THE COURT: Okay. That's fine by me. I
17 would feel compelled to reach the same conclusion,
18 but it would take time on the record. So if you
19 don't want to spend your time on that, that's fine
20 by me.

21 MR. GREENFIELD: I don't.

22 THE COURT: I have 119 as your next
23 exhibit, Mr. Greenfield, that Carter objected to,
24 and this is an email from Burdine to Sims.

25 MR. GREENFIELD: Which numbers, your

1 Honor? I couldn't hear you.

2 THE COURT: This is 119. This is another
3 Step 2 document.

4 MR. GREENFIELD: I think it's the same one
5 we just talked about. It's the Step 2 hearing.

6 THE COURT: That's true. So I have
7 already ruled on it. Thank you for noting that.

8 120 is the next one I have for you,
9 Mr. Greenfield, that Carter objected to. And the
10 objection is relevance grounds.

11 I get your objection, but I didn't see the
12 objection back in the status report for the pretrial
13 proceedings. So I know I have been a jerk to anyone
14 who is raising new ones. But double-check me and
15 make sure I'm right.

16 MR. GILLIAM: You are correct. The
17 objection was not raised in the status report.

18 THE COURT: But that's not the end of it
19 because if it is now irrelevant because of something
20 I have done in trial, then I can't hold you to a
21 pretrial objection you didn't raise. If that makes
22 sense.

23 So I guess the question is, is it
24 irrelevant and was when you filed the status report
25 with the objections pretrial, or is it irrelevant

1 now because of something I've done in trial, is what
2 I'm trying to figure out.

3 MR. GILLIAM: Well, if I'm being full
4 candid, I think it was irrelevant all along. So --

5 THE COURT: I get that. And that was my
6 read, too, but I never want to assume that. I
7 always want to talk through and ask it we made so
8 many rulings in trial that I have done something
9 that changed the scope of it.

10 So I will continue to be the jerk that
11 overrules that objection. I'm overruling it, so if
12 I'm wrong on that, you can still raise the merits of
13 appeal.

14 136 is what I have next as a Union exhibit
15 that Carter objected to. This is a text to Lyn
16 Montgomery. Relevance is the main objection, and
17 then prejudice is next, and then 404(b) is next.

18 So happy to hear any argument you have,
19 Mr. Gilliam, and I will ask Mr. Greenfield for his
20 response.

21 MR. GREENFIELD: Your Honor, we can move
22 on. I don't intend to spend any time on that
23 exhibit today.

24 THE COURT: Okay. Well, that simplifies
25 things. So I will just note that it is withdrawn.

1 I have the last one as being 137, and that
2 is emails on Step 2.

3 So I guess let me ask, if you are planning
4 on using that, is there anything unique about this
5 Step 2 document that changes how my analysis would
6 run on it? Mr. Gilliam.

7 MR. GILLIAM: No, your Honor. It's also
8 just another Step 2 proceeding document.

9 THE COURT: Understood.

10 So I will be consistent and I will
11 overrule that objection here on the record, and that
12 will streamline it if it gets offered into evidence.

13 So those are the only ones I had for this
14 morning. Am I missing something from last night's
15 designations that we need to cover this morning?

16 MR. GILLIAM: I don't think so.

17 THE COURT: And I haven't done a cross
18 reference of what was designated two nights ago
19 compared to what we covered yesterday.

20 So I guess my question is, is there
21 something that was designated that has not yet come
22 into evidence that was objected to that could come
23 into evidence that anyone wants to tell me?

24 This is digging deep. It's not even two
25 nights ago because we had a weekend in there. So I

1 don't know what this would be, like Thursday night
2 designations for Friday documents.

3 So is there any other exhibit y'all want
4 to talk about? Let me just simplify my phraseology.
5 Any other exhibit objection y'all want to talk about
6 in a pretrial posture?

7 MR. McKEEBY: No.

8 THE COURT: No for Southwest.

9 Anything for the Union or for Carter that
10 y'all can think of that we should talk about?

11 MR. GREENFIELD: Not that I can think of
12 at this time, your Honor.

13 THE COURT: Okay. Got it.

14 Then let me shift gears back to the
15 informal charge conference we had yesterday. We
16 covered a lot of ground but not everything.

17 So let me just ask, and I will go in
18 order. Carter, is there anything we didn't talk
19 about yesterday that you want to talk about?

20 I know my goal is still to turn another
21 draft of the charge back to you by noon, but we are
22 not at noon yet. I'm still working through it.

23 So is there anything else you want to
24 bring up that we didn't cover yesterday that you
25 think we should talk about?

1 MR. GILLIAM: Well, it wouldn't be
2 anything new that we didn't address already in our
3 brief. So I don't know if you want to revisit
4 something that's discussed in the brief that maybe
5 we didn't specifically talk about yesterday.

6 THE COURT: I can thumb through my
7 documents, but while I do, let me pose the same
8 question to Southwest next, Mr. Morris, and then
9 you, Mr. Greenfield. Is there anything on your mind
10 that we didn't talk about yesterday that you wanted
11 to get to and we just ran out of time?

12 MR. GREENFIELD: No, I think we covered it
13 all, your Honor.

14 MR. MORRIS: I have a couple of things.

15 THE COURT: Let's do it. We've got the
16 time, and we may have another hour with the security
17 line downstairs. So you got me here. May as well
18 use it.

19 So what have you got, Mr. Morris?

20 MR. MORRIS: We raised in our brief this
21 notion that the request for an accommodation or the
22 knowledge of the need for an accommodation does not
23 arise until after the employee violates whatever
24 work rule is at issue, then they are not entitled to
25 an accommodation.

1 We cite some cases in that regard.

2 And we think the instruction should
3 reflect that and indicate that if Ms. Carter
4 violated a policy before the knowledge of her need
5 for an accommodation was apparent, then she's not
6 entitled to one.

7 THE COURT: All right. And I think y'all
8 were arguing Abercrombie and --

9 MR. GILLIAM: I'll address that. Not only
10 Abercrombie, but the main case they cite for that
11 proposition is a Fifth Circuit case called Konop
12 back. And let me tell you why that case is totally
13 distinguishable here.

14 In Konop, you had a nurse who worked in a
15 nursing home who refused to pray the rosary with one
16 of the clients, and the company, the nursing home
17 company, fired her.

18 There, the Fifth Circuit held that the
19 nursing home had no -- no notion or no idea that she
20 needed an accommodation because she didn't -- her
21 need for an accommodation didn't become apparent
22 until after she was fired.

23 THE COURT: She didn't say "I'm a
24 Jehovah's Witness" before her termination.

25 MR. GILLIAM: Right. But here the

1 evidence clearly establishes in the fact-finding
2 meeting that Southwest -- that Southwest knew of
3 Carter's need for an accommodation, yet continued to
4 make its termination decision and avoid its burden
5 of affirmative duty to accommodate.

6 So they -- they create this conflicting
7 requirement by firing her under its social media
8 policies for her religious beliefs and practices.

9 So there, their logic is flawed that she
10 has to give them notice of her need for an
11 accommodation before she violates the policy.

12 Well, they determined that she violates
13 the policy after her fact-finding and they fire her
14 for it, so the logic of that position is totally
15 faulty.

16 And I guess I would also just reiterate
17 our position that there should be no -- nothing in
18 the jury charge about her having to request an
19 accommodation. It is just really an undisputed fact
20 here that Southwest knew before they fired her that
21 she needed an accommodation.

22 Ed Schneider has testified to that
23 repeatedly and it's in the fact-finding notes. I
24 think Exhibit 98. And in his synopsis, Exhibit 107.

25 THE COURT: Any response, Mr. Morris, on

1 Konop and the employer not having a factual basis
2 for what the accommodation might be?

3 MR. MORRIS: Sure. So first, you know, we
4 cite a Fourth Circuit case that has been recited --
5 I can send you ten cases that have recited this
6 proposition that -- I'm not saying that Ms. Carter
7 necessarily, post Abercrombie, had to make a
8 specific request, but at very least, the employer's
9 knowledge of the need for an accommodation is still
10 relevant, I think even post Abercrombie.

11 Konop cites a Fourth Circuit case with
12 approval, and that's why we point to it. We cite
13 some other district court cases, and I can give you
14 several more of them.

15 But I would say the import of this rule,
16 just to give you a practical example, an employee
17 may in some circumstance be entitled to an
18 accommodation to, say, travel to Mecca as part of
19 their religious practice. But if they just
20 disappear for a month and then the employer says,
21 Hey, you've been gone, we are going to discipline
22 you, and they say, Whoa, Whoa, whoa, that was a
23 religious thing I was doing, I'm entitled to an
24 accommodation, the fact that the employer didn't
25 know and there was no request until after the policy

1 was violated means there is no accommodation
2 required for that prior violation.

3 So that's why I think in this case -- and
4 we cite cases to this effect -- our argument is
5 Ms. Carter violated the policies before her
6 Christianity had been raised to anybody.

7 THE COURT: So what about if the knowledge
8 comes in after the policies were violated but before
9 the termination occurs? I think that's the argument
10 they are making is in the fact-finding meeting, then
11 they were then on notice that her religion was in
12 play with the sending of the messages.

13 So what about that timeline? Because from
14 your hypo, you know, it was a little bit different
15 on the timetable. Here I'm wondering, what if that
16 knowledge comes into play after the policies were
17 broken but before the firing occurs. Does that
18 change the outcome?

19 MR. MORRIS: I don't think so. I think
20 Chalmers counsels that once the policy is violated,
21 you are entitled to enforce that policy.

22 Now, subsequent to the employee raising
23 their religious issue or it becoming known, then
24 maybe there is leniency subsequently. And I can
25 send additional cases if that would be helpful.

1 But no, I don't think the fact that the
2 response to the pre-knowledge violation is limited
3 by the fact that after the violation, they say, Hey,
4 I have been -- I have a religious reason.

5 And I think the example I gave is
6 illustrative. If an employee leaves and the
7 employer hasn't yet decided what to do and they just
8 disappear, you don't get to then come and say, Whoa,
9 whoa, whoa, it was for a religious reason I just
10 didn't show up for work for a week.

11 THE COURT: Understood.

12 You said you had two things, and that was
13 thing one. Is there a thing two?

14 MR. GREENFIELD: Your Honor, may I just
15 touch on that briefly?

16 I think an important thing to consider in
17 that is sufficiency of notice, and perhaps a jury
18 question that touched on perhaps whether Southwest
19 or the Union was absolutely put on sufficient notice
20 to provide that accommodation.

21 I think that might potentially cure any
22 issues that we are dealing with on this on the
23 Union's behalf. I'm not speaking for Southwest, of
24 course.

25 MR. GILLIAM: Your Honor, may I address

1 Mr. Greenfield?

2 THE COURT: You may.

3 MR. GILLIAM: The notice is apparent on
4 the Facebook -- in the Facebook videos and the
5 messages and posts themselves that this is a
6 religious issue.

7 In fact, it's obvious that President Stone
8 treated it that way because when she reports
9 Ms. Carter, she reports Ms. Carter for her religious
10 comments, quote/unquote, quotes taken directly from
11 her complaint.

12 MR. GREENFIELD: And I guess my response
13 to that, your Honor, would be is that enough, still
14 sufficient to put either the Union or the company on
15 notice that they have to provide a reasonable
16 accommodation on that? I think a jury should
17 consider -- should consider that question.

18 THE COURT: Understood.

19 Thing two.

20 MR. MORRIS: I would just say whatever
21 Ms. Stone's knowledge and notice isn't necessary
22 imputed to us. The policy violation happened. I
23 think under the law we are entitled to respond to it
24 even though Ms. Carter then raises her religious
25 issues.

1 THE COURT: Sure. Understood.

2 Okay. Is there another topic we should
3 talk about jury charge-wise?

4 MR. GILLIAM: I could address the law he
5 cites in Chalmers if you want. I don't want to
6 waste your time, though.

7 THE COURT: Sure. If you've got something
8 succinct, I'm happy to hear it.

9 MR. GILLIAM: I would just say that
10 Chalmers is a pre-Abercrombie case. And another
11 thing that's significant about that case is that
12 there the employer actually engaged in accommodation
13 efforts with the employee, and the whole issue there
14 was whether the accommodation was reasonable.

15 It was not a situation, as in Abercrombie
16 and in Ms. Carter's case, where the employer just
17 abruptly fired her without even initiating
18 accommodation efforts.

19 Even Alito's concurrence in Abercrombie &
20 Fitch raises the issue that the whole point of
21 undertaking the accommodation process is that the
22 employer doesn't do that, that the employer tries to
23 make efforts to work with the employee and give her
24 a reasonable accommodation and not fire her
25 abruptly.

1 THE COURT: All right. Thank you.

2 MR. GILLIAM: But having said that, we
3 kind of touched on this issue. One the other issues
4 that I would have touched on yesterday is that right
5 now the jury charge is formulated to where one of
6 the elements of the failure to accommodate claims is
7 whether there was a conflicting job -- yeah,
8 conflicting employment requirement.

9 Abercrombie also illustrates why that
10 element is -- it's not the best formulation of that
11 element for a case like this.

12 Abercrombie, in that case you had an
13 employee who was not hired because of Abercrombie &
14 Fitch's headscarves policy.

15 So the way that Justice Scalia formulated
16 the elements there was not whether there was some
17 conflicting requirement. He knew, it was clear that
18 there was no conflicting requirement -- or that
19 there was a conflicting requirement because they
20 failed to hire her.

21 Similarly, in this case, they fired
22 Ms. Carter under their policies.

23 So I think that to ask the jury whether
24 there is a conflicting employment requirement is a
25 bit confusing because that -- that is a -- that

1 should be a clear settled issue, resolved issue.

2 They fired Ms. Carter. That's the conflict with the
3 social media policy.

4 THE COURT: Any response on the conflict,
5 Mr. Morris?

6 MR. MORRIS: Yeah, two things.

7 I think one is, my recollection of the
8 testimony is Ms. Carter said, I didn't violate any
9 policy.

10 So from my vantage point -- and there is
11 case law in this regard -- if you say, I haven't
12 violated any policy, then there is nothing to be
13 accommodated.

14 So I'm not sure about -- you know, I think
15 her testimony contradicts what they are saying.

16 MR. GILLIAM: However you construe
17 Ms. Carter's testimony there, Southwest sure thought
18 that Ms. Carter violated the social media policy.
19 They fired her for it.

20 MR. MORRIS: Your Honor, there is a
21 case -- and I think we cited some of it in our
22 summary judgment motion -- where courts have
23 dismissed claims or granted summary judgment on
24 claims where the person alleges, actually violated
25 no policy, but they terminated anyway.

1 And the reasoning in those cases is if you
2 allege that no policy is violated and you are
3 terminated, what you are alleging is a
4 straightforward religious discrimination claim, not
5 a failure to accommodate claim. Because there is
6 nothing to be accommodated under your own theory.

7 So you can still say, you know, the
8 employer has some kind of abstract hostility towards
9 people of my religion, which is sort of one way in
10 which you can establish liability, perhaps, under
11 Title VII, but you're not in the accommodation box.
12 That's why I think it is relevant.

13 MR. GILLIAM: All of those are
14 pre-Abercrombie cases.

15 MR. MORRIS: That's not accurate.

16 And if I could just suggest one other
17 thing about the conflict. You know, Ms. Carter's
18 articulated religious belief is that she's a
19 Christian and that abortion is the taking of human
20 life.

21 It's not clear, in my view on the record,
22 that the particular actions she engaged in were
23 clear manifestations of that religious practice.

24 I'm not sure that there is any evidence on
25 the record right now that she was not allowed to

1 manifest her articulated belief in the workplace.

2 Just because she wasn't allowed to send
3 these particular videos -- and we cite some cases
4 about that -- just because something in some way is
5 related to your religion doesn't mean it's a
6 practice that's required to be accommodated.

7 So, for example, you know, you want to
8 take -- the example you used earlier, you want to
9 travel to Mecca. The fact that you feel like doing
10 it in March, you want to travel to Mecca in March,
11 is not something you have to accommodate.

12 Similarly, your view that abortion is the
13 taking of a human life, the fact that you want to
14 circulate videos to other people in that regard is
15 not necessarily your religious belief itself.

16 MR. GILLIAM: Your Honor, he's addressing
17 the -- what you call the personal preference cases,
18 that personal preference doesn't necessarily dictate
19 what a reasonable accommodation is. And that issue
20 arises when the employer undertakes to make efforts
21 to provide a reasonable accommodation.

22 But here they didn't do that. They fired
23 her right away. They didn't undertake any
24 accommodation efforts.

25 So whether -- if they had provided her or

1 attempted to provide her a reasonable accommodation,
2 then it's true that maybe Ms. Carter's personal
3 preferences for how she made her posts or
4 communicated with the Union, maybe that would come
5 into play. But it just doesn't here because they --
6 they short-circuited the whole process by firing her
7 immediately.

8 THE COURT: They are here. We can bring
9 them in. Anyone need a break or are we okay?

10 MR. GREENFIELD: I could use a two-minute
11 restroom break.

12 THE COURT: Let's do it. Let's try two to
13 three minutes, how about that?

14 So I will go into recess. I will come
15 back on in a couple of minutes, and then we will
16 bring in the jury.

17 THE COURT SECURITY OFFICER: All rise.
18 (Recess.)

19 THE COURT SECURITY OFFICER: All rise.

20 THE COURT: Okay. We can go ahead and
21 bring in Mr. Schneider, if there is nothing else
22 housekeeping-wise.

23 MR. McKEEBY: That housekeeping issue on
24 the exhibit, do you care if Mr. Schneider is here?

25 THE COURT: The exhibit was not with him,

1 right?

2 MR. McKEEBY: Correct.

3 THE COURT: I don't have a problem with
4 him being on the stand if -- you know what, I can
5 mute the witness monitor alone and everyone else can
6 see it. So how about we do that. We can go ahead
7 and bring him in. I will mute the witness monitor
8 for you to flash 36 on.

9 MR. McKEEBY: It's not technically my turn
10 right now, but --

11 THE COURT: Oh, that's right. Should we
12 wait for your next turn with him and do it?

13 MR. McKEEBY: Yes.

14 THE COURT: Okay.

15 (The witness entered the courtroom.)

16 THE COURT: Welcome back, Mr. Schneider,
17 to your rightful place in the courtroom.

18 We can go ahead and get the jury now.

19 Mr. Pryor, I thought we had just handed
20 the baton over to you, is that correct?

21 So it's the end of round one. You went,
22 you went, and then it's to you. So you can go ahead
23 and take your rightful place.

24 (The jurors entered the courtroom.)

25 THE COURT: Okay. You can be seated.

1 And, Mr. Schneider, you are still under
2 oath, so we will just go ahead and proceed with the
3 questions from Mr. Pryor on cross-examination.

4 I will just ask y'all to keep some space
5 between questions and answers.

6 You can proceed, Mr. Pryor.

7 CROSS-EXAMINATION

8 BY MR. PRYOR:

9 Q. Mr. Schneider, let's look at Exhibit 74, what
10 was referred to as Exhibit 74.5 yesterday.

11 And where it says, "Democrats, this is what you
12 support?" do you know whether or not that was
13 written by Ms. Carter or someone else?

14 A. It was on Ms. Carter's page, but I'm not sure
15 who wrote it.

16 Q. Do you think she actually made the video?

17 A. I don't believe so.

18 Q. Okay. Did you ask who wrote that?

19 A. She stated that this information was what she
20 believed --

21 Q. Was what --

22 A. -- but I didn't ask the question, no.

23 Q. She posted this from someone else to show this
24 video? Yes?

25 A. Yes.

1 MR. PRYOR: Let's look at Exhibit 10.

2 BY MR. PRYOR:

3 Q. While he's calling up Exhibit 10, you were
4 asked yesterday, did Ms. Carter, during the
5 fact-finding meeting, raise any complaint that she
6 was being discriminated against by the company
7 because of her religion.

8 Do you recall that?

9 A. Yes.

10 Q. And, in fact, at that point in time, Southwest
11 had taken no action in regard to Ms. Carter, true?

12 A. At what point in time?

13 Q. The fact-finding meeting. You hadn't --
14 Southwest hadn't done anything to her, had they?

15 A. No. We hadn't made a decision at that point.

16 Q. They didn't fire her at that point because of
17 her religion; that was later.

18 MR. McKEEBY: Objection to the
19 characterization.

20 THE COURT: Sustained.

21 BY MR. PRYOR:

22 Q. At the fact-finding meeting --

23 MR. McKEEBY: And move to strike, your
24 Honor. I'm sorry.

25 THE COURT: I will strike that.

1 You can ask a new question.

2 BY MR. PRYOR:

3 Q. At the fact-finding meeting, no action had been
4 taken against her because of her religion for which
5 she would then complain, true?

6 A. No action had been taken. We hadn't finished
7 the investigation and she hadn't given all her
8 information at that point.

9 Q. Okay. That's my point. He was saying, Well,
10 she didn't complain that you were discriminating
11 against her because of her religion at the
12 fact-finding meeting.

13 Well, that's kind of silly because no action
14 had been taken yet for her to complain about, true?

15 A. No action had been taken yet, no.

16 Q. Is my statement true? There was nothing for
17 her to complain about in terms of Southwest taking
18 action because no action had been taken. True?

19 A. She could not complain about the action, that
20 is true.

21 Q. Well, there would be nothing to complain about
22 because you hadn't taken action, right?

23 A. I had not taken action, yes.

24 Q. So you are agreeing with my statement?

25 A. She did not complain at that point, if that is

1 your question, yes.

2 Q. That's only half my question.

3 I'm going to see if you are going to agree,
4 there was nothing for her to complain about at that
5 point because you hadn't taken action against her,
6 true?

7 A. True.

8 Q. Okay. And the same thing in regard to Union
9 activity. There was nothing for her to complain
10 about Southwest taking action against her for Union
11 activity because Southwest, at the fact-finding
12 meeting, had taken no action, true?

13 A. True.

14 Q. That wasn't an effort -- those questions
15 weren't an effort to try and mislead the jury, was
16 it?

17 MR. McKEEBY: Objection, your Honor.

18 THE COURT: Sustained.

19 MR. McKEEBY: And move to strike.

20 THE COURT: Sustained.

21 Jury, please disregard.

22 MR. PRYOR: Let's look at Exhibit 10.

23 We move for the introduction of
24 Exhibit 10.

25 THE COURT: Any objection to 10?

1 MR. GREENFIELD: None from the Union.

2 MR. McKEEBY: No objection.

3 THE COURT: Okay. 10 is in.

4 You can publish.

5 (The referred-to document was admitted
6 into evidence as Trial Exhibit 10.)

7 BY MR. PRYOR:

8 Q. Now, this is the Southwest accommodation
9 policy, true?

10 A. Yes.

11 Q. And it says, "In regard to the ACT team is
12 responsible for determining whether a reasonable
13 workplace accommodation can be made. As such, an
14 applicant or employee in need of an accommodation or
15 a leader aware of an applicant or employee's need or
16 request for accommodation should contact Southwest's
17 ACT team."

18 Did I read that correctly?

19 A. Yes.

20 Q. What does "leader" refer to?

21 A. Somebody in a leadership position at Southwest
22 Airlines.

23 Q. And, in fact, "leader" is just about anyone in
24 management. It would certainly include you,
25 correct?

1 A. Yes.

2 Q. Do you recall telling us, when I first asked
3 you questions in this trial, that you had no
4 obligation to report an employee's potential need
5 for an accommodation, that it was the employee's
6 responsibility?

7 A. It's the employee's responsibility to let me
8 know or to reach out to the ACT team, that's
9 correct.

10 Q. Is that what this says? Where does it say it's
11 the employee -- do you see where it says "or a
12 leader aware of an applicant or employee's need."

13 It doesn't say the employee has to tell you.
14 You just have to be aware of the need. The employee
15 doesn't have to play lawyer, the employee doesn't
16 have to use magic words, true?

17 A. I don't know what "magic words" would be.

18 Q. Do you believe that the policy requires you, if
19 you are aware that an employee is involved in
20 protected activity and has a need for an
21 accommodation, whether they ask you or not, you
22 should go to the ACT team and make them aware of it?

23 MR. GREENFIELD: Objection, compound
24 question.

25 THE COURT: I will overrule that.

1 You can answer.

2 THE WITNESS: Yes, if we were made aware
3 of it.

4 BY MR. PRYOR:

5 Q. Well, let's talk about "aware."

6 When someone tells you, I'm engaged in activity
7 because of my religious belief, and you are getting
8 ready to fire them for engaging in that activity,
9 that doesn't tell you there might be a need for an
10 accommodation?

11 A. I did not come to that conclusion.

12 Q. I understand that. But do you not see when
13 someone raises something like their religious belief
14 that you should raise that issue with ACT and
15 didn't?

16 MR. McKEEBY: Objection, vague and
17 incomplete hypothetical.

18 THE COURT: I'll allow it.

19 THE WITNESS: If she would have made it
20 aware to me specifically, then I would have, that
21 she needed the accommodation.

22 BY MR. PRYOR:

23 Q. What more could she do other than use the magic
24 word "accommodation" with you, telling you -- she
25 told you over and over about how this is one of the

1 most important aspects of her life, and her
2 relationship with God tells her that she needs to
3 raise these issues. That doesn't tell you that
4 religious belief is involved and an accommodation
5 should at least be considered? It doesn't tell you?

6 A. No, not at the time.

7 Q. Would it now?

8 A. If it was raised to me --

9 MR. McKEEBY: Objection, relevance.

10 MR. PRYOR: Well, we have a claim for
11 punitive damages.

12 THE COURT: Hold on. Hold on. That's a
13 speaking objection.

14 I'll allow it.

15 BY MR. PRYOR:

16 Q. Go ahead. You can answer.

17 A. If it was raised to me, then yes, I would.

18 Q. I just told you how it was raised.

19 And if it was raised with you, someone tomorrow
20 came in and said, Hey this post on my personal
21 Facebook page is because of my religious beliefs,
22 heartfelt, significant, important religious beliefs
23 and communication, would you then, would you now go
24 to the ACT team and say, Hey, do you think we should
25 consider an accommodation here? Would you at least

1 do that?

2 MR. McKEEBY: Objection, vague, incomplete
3 hypothetical, relevance.

4 THE COURT: I'll allow it.

5 THE WITNESS: If it was made aware to me
6 that, yes, they needed the accommodation, yes, the
7 religion was the reason for the accommodation, then
8 I would, yes.

9 BY MR. PRYOR:

10 Q. So I guess where our disconnect is, I have now
11 told you all the facts. I just didn't use the word
12 "accommodation."

13 If the employee still doesn't use the magic
14 word "accommodation," you are not going to go to ACT
15 and see if an accommodation can be granted, true?

16 A. It really depends on the situation, sir. I'm
17 not trying to say I'm not doing -- or taking care of
18 my employees. I'm just saying that there is a
19 situation where they would make me aware of it more
20 so than what this case had.

21 Q. Okay. So this case, where Charlene told you
22 over and over at the fact-finding meeting -- the
23 jury will get to it, we'll put it up for them during
24 closing -- but you've read it. And you know that
25 over and over she raised this was part of her

1 heartfelt religious belief that she was exercising.
2 That was not enough to put you on notice that she
3 needed an accommodation? True?

4 MR. GREENFIELD: Objection, your Honor,
5 asked and answered at this point.

6 THE COURT: I will sustain.

7 MR. PRYOR: What was the objection?

8 THE COURT: Sustained.

9 MR. PRYOR: I just didn't hear what the
10 objection was.

11 THE COURT: Asked and answered.

12 MR. PRYOR: Fair enough.

13 BY MR. PRYOR:

14 Q. How about union activity. If someone came in
15 and told you, Hey, I'm engaged in complaining to my
16 union, and you shouldn't be taking action against me
17 because I'm engaged in this protected activity.

18 Just knowing those facts, would you go to the
19 ACT team and say, Hey, we need to consider an
20 accommodation here? Just on those facts, would that
21 be enough?

22 A. No.

23 Q. Is there a process under the social media
24 policy for pre-approval of posts, so every time
25 somebody at Southwest that's an employee that's at

1 home on their personal computer and wants to say
2 something to the world about their opinion about
3 whatever, that they can send it to Southwest
4 Airlines to make sure they won't get fired for it?
5 Is there a process for that?

6 A. We always ask our employees to reach out to the
7 base if they have any questions that have to do with
8 the airline and business that they would do.

9 Q. Has anyone ever done that, to your knowledge?

10 A. I have had people reach out to me and ask me
11 about putting something on social media, and I have
12 cautioned them.

13 Q. Did anyone send you something for pre-approval
14 before they posted it?

15 A. No, not that I can recall.

16 Q. And let's look at Exhibit 10 again.

17 Is there anything in the policy that says --
18 let's see. That's the accommodation policy.

19 Let's look at the social media policy. I think
20 it's -- I don't know what it is, 8, whatever it is.
21 It looks like it's 9. Let's look at Exhibit 9.

22 Is there a process in the written social media
23 policy for an employee to come to Southwest Airlines
24 in advance and get approval so they won't get fired?
25 Is there anything like that in this policy?

1 A. I would have to read through it in detail,
2 but --

3 Q. Read it. Read it. You are telling me you
4 think it's in there.

5 By the way, I was told by some of the witnesses
6 yesterday that took the stand that you've got to
7 look at these policies every year, you've got to be
8 familiar with them, or you can't work at Southwest
9 Airlines. Is that true?

10 MR. McKEEBY: Objection, mischaracterizes
11 testimony. It's compound as well.

12 MR. PRYOR: The jury can see if I
13 mischaracterized it or not.

14 THE COURT: Hold on.

15 I will allow you to rephrase it. I will
16 sustain the objection.

17 BY MR. PRYOR:

18 Q. Is it, in fact, your obligation to be familiar
19 with this policy as you sit here today as a 28-year
20 employee of Southwest Airlines that fired someone
21 under this very policy?

22 A. Yes, we are supposed to be aware of it.

23 Q. So you can't answer the basic question of
24 whether or not this policy provides a procedure for
25 pre-approval of posts without reviewing it, true?

1 MR. McKEEBY: Objection, argumentative.

2 THE COURT: I'll allow it.

3 THE WITNESS: I don't remember that part
4 of it. I would have to look through this to see if
5 that's actually a part, because I don't remember
6 there being something that says they could submit
7 before they post.

8 BY MR. PRYOR:

9 Q. We will let the jury read it, and you can maybe
10 read it in your off-time to see whether or not there
11 is such --

12 MR. GREENFIELD: Objection, your Honor, to
13 the sidebars.

14 MR. McKEEBY: Objection to the last part.
15 Move to strike.

16 THE COURT: Sustained.

17 I will strike the sidebar.

18 MR. PRYOR: I pass the witness.

19 THE COURT: Are you passing the witness,
20 Mr. Pryor?

21 MR. PRYOR: I'm sorry. I didn't say it
22 into the microphone, I guess. I pass the witness,
23 your Honor.

24 THE COURT: Okay.

25 Mr. McKeeby, round two.

1 MR. McKEEBY: Your Honor, the housekeeping
2 matter that we discussed.

3 THE COURT: Yes. So, jury, there was an
4 exhibit that was admitted yesterday, and I neglected
5 to show y'all the exhibit. So I'm un-muting your
6 monitors.

7 Sidebar right quick.

8 (Thereupon, the following proceedings were
9 had at sidebar:)

10 THE COURT: So we pulled the transcript
11 and couldn't find a reference to 36 in it. Is there
12 another witness who you can bring it up with, 36?

13 MR. McKEEBY: With Ms. Hudson?

14 No, I know I did.

15 THE COURT: I have 38.

16 MR. McKEEBY: Was that through Hudson?

17 Because that was the only exhibit that I
18 introduced through Hudson would have been 36. Maybe
19 there was something in the numbering that was off.

20 THE COURT: So this was late in the day,
21 but Hudson was the next to last, and then we had 44,
22 7, 11, 2, 9, 16.

23 How about we take it up at another break.
24 We will all do research and figure it out.

25 I just -- I don't have any basis to flash

1 it in front of the jury yet because I don't have a
2 record of it having come in with a witness. Does
3 that make sense?

4 MR. McKEEBY: Well, it makes sense in the
5 sense that I understand, but it just does not
6 comport with my recollection at all. Because I know
7 I asked her, What was the context of you sending
8 this? And she said, Because there was a lot of
9 infighting between flight attendants.

10 So we published this to tell them -- it
11 was towards the end of her testimony, and I know I
12 showed her the document, and I thought I had
13 admitted it.

14 I know I asked her, Why did you send this
15 out at the time?

16 And she said, The reason is because there
17 was squabbling about social media, and we wanted to
18 remind the flight attendants of our policy.

19 I'm certain I asked that.

20 THE COURT: I mean, if you talked about it
21 with her, that's fine. Here is my thought. These
22 are business records. The custodian probably can
23 authenticate anything.

24 So the next round, you can bring it up.
25 And if you already talked about it with her, now the

1 jury will see it.

2 MR. McKEEBY: Okay.

3 (Thereupon, the sidebar was concluded and
4 the following proceedings were held in open
5 court:)

6 THE COURT: So we are not going to flash
7 an exhibit yet. You will probably see it at some
8 point coming up.

9 So you can proceed, Mr. McKeeby. You can
10 go right there if you want to.

11 MR. McKEEBY: I'm going to try to go right
12 there.

13 REDIRECT EXAMINATION

14 BY MR. McKEEBY:

15 Q. What is a Read Before Fly memo?

16 A. That is a memo that's sent out to the flight
17 attendant work group that they need to read before
18 they fly the next time.

19 Q. Do you get those as well as a base manager?

20 A. Yes, I do.

21 MR. McKEEBY: Can you pull up 36?
22 Move to admit 36 into evidence and
23 publish.

24 MR. PRYOR: Lack of foundation at this
25 point.

1 THE COURT: Can you set it?

2 BY MR. McKEEBY:

3 Q. Is this a Read Before Fly memo?

4 I'm sorry. Let me back up.

5 What is this document?

6 A. It is a Read Before Fly that was put out by
7 Naomi Hudson.

8 Q. And who is Ms. Hudson?

9 MR. PRYOR: Well -- I'm sorry. Go ahead.

10 THE COURT: Proceed.

11 BY MR. McKEEBY:

12 Q. Who is Ms. Hudson?

13 A. She was director of labor relations at the
14 time.

15 Q. And is this the type of document that you would
16 have received?

17 A. Yes, it is.

18 Q. In the normal course of your business as a base
19 manager?

20 A. Yes.

21 MR. McKEEBY: Move to admit Exhibit 36 and
22 publish.

23 MR. PRYOR: Lack of foundation. He's
24 established no personal knowledge of this witness.

25 THE COURT: I will overrule that.

1 Any objection from the Union?

2 MR. GREENFIELD: No, your Honor.

3 THE COURT: All right. It's admitted into
4 evidence and we are publishing.

5 (The referred-to document was admitted
6 into evidence as Trial Exhibit 36.)

7 MR. McKEEBY: And how about Exhibit 10.
8 If you could blow up the same spot and highlight the
9 same area that we did previously, which is -- yes,
10 that sentence right there.

11 BY MR. McKEEBY:

12 Q. Mr. Pryor asked you some questions about this
13 section of the policy, correct?

14 A. Yes.

15 Q. And I think we established that you are a
16 leader at Southwest Airlines, correct?

17 A. Yes.

18 Q. And as you look at the policy, would you agree
19 that at the time of Ms. Carter's fact-finding
20 meeting that you were a leader aware of an
21 employee's need for an accommodation?

22 MR. PRYOR: Object, leading.

23 THE COURT: I'll allow it.

24 THE WITNESS: I was not aware that she
25 needed an accommodation.

1 BY MR. McKEEBY:

2 Q. Did she tell you during the fact-finding
3 meeting that her religious beliefs conflicted with a
4 particular Southwest policy?

5 A. No, she did not.

6 Q. Did she tell you that the company should not
7 apply its policies to her because of her religious
8 beliefs or practices?

9 MR. PRYOR: Object, leading.

10 THE COURT: I'll allow it.

11 THE WITNESS: No, she did not.

12 MR. McKEEBY: Nothing further.

13 THE COURT: Okay. Mr. Greenfield.

14 MR. GREENFIELD: No further questions,
15 your Honor.

16 THE COURT: Okay. Round two for you?

17 MR. PRYOR: As much I would like to, I
18 have to say no.

19 THE COURT: Okay. So no further questions
20 for you because you can't ask questions based on
21 your own questions, Mr. McKeeby.

22 So Mr. Schneider, you are now re-excused
23 as a witness. Thank you for coming back.

24 Now Southwest can call its next witness.

25 MR. McKEEBY: Can Mr. Schneider be excused

1 for the day?

2 THE COURT: Yes.

3 MR. McKEEBY: Southwest calls Meggan
4 Jones.

5 THE COURT: Okay. You may do so.

6 Ms Jones, you can come take the stand.

7 MR. McKEEBY: And by "excused for the
8 day," can he fly back to Denver?

9 THE COURT: I will give you no further
10 restrictions.

11 Any desire at this present time to recall
12 him in the plaintiff's rebuttal case?

13 MR. PRYOR: A desire, but we do no plan on
14 it.

15 THE COURT: Okay. Understood.

16 Then I will give you no restrictions on
17 your travel or speech. You are free to leave.

18 (The witness exited the courtroom.)

19 (MEGGAN JONES was duly sworn by the
20 Clerk.)

21 THE COURT: Okay. Ms. Jones, you know the
22 routine because we've said it with every witness.

23 Mr. McKeeby, you can continue.
24
25

1 DIRECT EXAMINATION

2 BY MR. McKEEBY:

3 Q. Ms. Jones, state your name for the record,
4 please.

5 A. Meggan Jones.

6 Q. How long have you been -- where are you
7 employed currently? I'm sorry.

8 A. At Southwest Airlines.

9 Q. What is your current position?

10 A. Senior manager of labor administration.

11 Q. How long have you been in that role?

12 A. Just over a year and a half now.

13 Q. What were you before that?

14 A. I was a base manager prior to that. I was an
15 assistant base manager prior to that.

16 Q. Where were you a base manager?

17 A. In Phoenix, Arizona.

18 Q. And in 2017, what was your position?

19 A. I was an assistant base manager at the Denver
20 in-flight base.

21 Q. How long have you been employed overall by
22 Southwest Airlines?

23 A. Just over 11 years.

24 Q. Can you briefly explain to the jury, since 2017
25 is the relevant time period, what you did as a

1 assistant base manager at the Denver airport.

2 A. I supported the Denver in-flight team and
3 flight attendants. I supported the base manager
4 there. Scheduling issues within the staff, personal
5 issues that arose with the flight attendants,
6 conducted investigations, and things of that nature.

7 Q. And I don't think I asked you this question.

8 How long were you the assistant base manager in
9 Denver?

10 A. I was three years, three and a half years.

11 Q. Okay. Did you work with Ms. Carter at the
12 Denver airport?

13 A. Yes, I did.

14 Q. What were your observations or experience with
15 her prior to the investigation that we will talk
16 about?

17 A. Prior to this investigation and prior to being
18 an assistant base manager, I was a supervisor at the
19 Denver base, and I was actually her direct
20 supervisor.

21 My interactions with her had always been very
22 friendly up until this point. I hadn't seen her in
23 a while when this meeting occurred because she
24 hadn't flown much over the previous three years.
25 But I had no problems or, you know, concerns at that

1 point.

2 Q. You mentioned that she hadn't flown for some
3 time. Is there a process at Southwest for flight
4 attendants to trade or give away their shifts? Can
5 you kind of explain that to jury?

6 A. Yes. Southwest is one of the only airlines in
7 the country that does not have a flying minimum for
8 their flight attendants, so they can contractually
9 trade down or give away all of their assignments,
10 which is a huge perk of the job.

11 Q. And how do they go about doing that?

12 A. There is a system that the flight attendants
13 utilize that they can put their trips in for trade.
14 They can say, I want to give this away. They can
15 put money to say, Hey, I will give you money if you
16 pick up this trip, or to trade into a different
17 trip. And it's a voluntary process.

18 Q. How did you find out about the complaints
19 against Ms. Carter?

20 A. Ed Schneider made me aware.

21 Q. And in what context?

22 A. He let me know that he had received a complaint
23 and was going to be conducting an investigation, and
24 asked me if I would assist as his note-taker in that
25 meeting.

1 Q. Assist as the --

2 A. The note-taker.

3 Q. Did you have any other responsibilities in
4 connection with the investigative process?

5 A. I asked some clarifying questions during the
6 meeting, but other than that, I really didn't have a
7 role in the investigation itself.

8 Q. How about prior to the fact-finding meeting,
9 were you asked to do anything prior to the meeting?

10 A. I was asked to review the videos that had been
11 sent, and I did go look at her Facebook page. Ed's
12 not real Facebook savvy and I am.

13 I went to check it out, which is pretty
14 standard any time we have a social media
15 investigation, just to see some context of what we
16 are looking at here from a nexus standpoint or
17 whatnot.

18 Q. I will get to that in a second.

19 Did I understand your testimony correctly that
20 you also reviewed the videos?

21 A. Yes, I did.

22 Q. What do you remember about that?

23 A. I was very disturbed by those videos.

24 Q. Let me stop you. Did you review two videos?

25 A. Yes, I did.

1 Q. Go ahead.

2 A. I had to look at them to become familiar with
3 the investigation. And I just remember being kind
4 of horrified by the images because I -- this is the
5 Internet, and we don't know, really truly, where
6 those images came from.

7 I mean, I thought that could be somebody's
8 miscarried baby or somebody's -- it felt like an
9 exploitation of something very personal and horrific
10 and it made me feel queasy. It kind of ruined my
11 day. I didn't feel great for the rest of the day.

12 Q. You then, I think, indicated that you reviewed
13 Ms. Carter's Facebook page.

14 Why did you do that?

15 A. It's pretty standard, any time there is a
16 social media investigation, just to kind of get some
17 context of, you know, okay. We get a lot of social
18 media complaints. So, you know, what really are we
19 looking at here from a severity standpoint and a
20 nexus standpoint.

21 Q. Did you pull the photographs that we've seen in
22 this case from the Facebook page?

23 A. I did pull a few photographs, yes.

24 Q. Can you describe those photos?

25 A. What I recall there being was a picture of her

1 flight attendant wings with some caption about
2 Southwest. Pictures of her in uniform on the
3 aircraft, several pictures of those.

4 Q. And what did you do to find those posts? Walk
5 the jury kind of through it. I don't know their
6 Facebook familiarity, so walk them through kind of
7 what you did to identify those posts, please.

8 A. It was easy to locate her page on Facebook. It
9 was a public page, meaning anything that was on it
10 was open to the public, which, you know, makes it
11 very easy to see what's on there.

12 And to find those photographs, I clicked on
13 "photos," and there they were. I didn't have to do
14 a lot of digging, you don't generally have to do a
15 lot of digging on Facebook to find photographs and
16 things like that. So it wasn't a laborious process
17 by any means.

18 Q. How long did it take you?

19 A. Maybe three minutes in its entirety.

20 Q. And did I understand correctly that you
21 attended the fact-finding meeting?

22 A. Yes, I did.

23 Q. Let's talk a little bit about that.

24 Were you there in person?

25 A. Yes, I was.

1 Q. And if you could remind the jury, who else was
2 there?

3 A. Ed Schneider was there. Denise Gutierrez was
4 there from employee relations. Edie Barnett from
5 our -- what we call our people department. Chris
6 Sullivan and Charlene Carter. And Chris was acting
7 as a 556 rep.

8 Q. Did Ms. Carter admit at the fact-finding
9 meeting to sending the videos to Ms. Stone?

10 A. Yes.

11 Q. Now, had you had any previous dealings with
12 Ms. Stone?

13 A. I knew her before, but not well. I had met her
14 in, like, passing a few times.

15 Q. In passing at the airport?

16 A. Like at headquarters. At the airport.

17 Q. Can you describe to the jury your general
18 observations at the fact-finding meeting?

19 A. Yes. I was very surprised at the fact-finding
20 meeting. I was -- I was frustrated at kind of what
21 was happening during the meeting. It was a
22 difficult meeting.

23 Charlene kept taking us off topic, which the
24 topic was these videos that were sent, and there was
25 a lot of information being presented.

1 But what was frustrating about it was -- and
2 shocking was just she had such a lack of remorse in
3 this meeting and was very proud of what she had
4 done.

5 And that was shocking to me because it was so
6 different from the Charlene that I had interacted
7 with prior to this meeting. I was kind of taken
8 aback by just the lack of humility and the lack of
9 receptiveness that this action was very hurtful to
10 another employee.

11 Q. Were you the one who was responsible for taking
12 the notes of the meeting?

13 A. Yes.

14 MR. McKEEBY: And let's pull those up. I
15 think they have been admitted. 98.

16 BY MR. McKEEBY:

17 Q. Did you create this document?

18 A. Yes, I did.

19 Q. Did you say anything during the fact-finding
20 meeting?

21 A. Yes, I did.

22 MR. McKEEBY: Let me go to 98.13.

23 BY MR. McKEEBY:

24 Q. It looks like, at the bottom of the page,
25 that's something that you said to Ms. Carter?

1 A. Yes, it is.

2 Q. Can you read that for the jury?

3 A. "Charlene, if I can clarify, you do have the
4 right to disagree or complain about your union.
5 It's the method in which you complain or how those
6 complaints are made that causes concern when the
7 nature of those complaints begins to impact one of
8 our workplace policies."

9 Q. I think you'll have to go to the next page.

10 A. "That's when it becomes an issue.

11 "Your most recent post to Audrey is the main
12 reason why we are here today, because of the graphic
13 images and graphic nature of the post.

14 "Audrey is still an employee of Southwest
15 Airlines and she's represented by these policies.
16 These are expectations and guidelines for all
17 employees. Your most recent post to her was very
18 disturbing to her and made her uncomfortable."

19 Q. How did you feel after the meeting?

20 MR. McKEEBY: You can take that down.

21 THE WITNESS: I was pretty shocked after
22 the meeting. I was kind of reeling from it, just
23 the graphic nature of the post and the videos and
24 just Charlene's conduct in the meeting. It just
25 left me feeling kind of like perplexed and upset for

1 the rest of the day.

2 BY MR. McKEEBY:

3 Q. Did you share those feelings with
4 Mr. Schneider?

5 A. We did have a discussion. I don't remember the
6 details of it. But I did tell him that I was
7 shocked because it was just so different from the
8 Charlene I had interacted with previous to this
9 meeting.

10 MR. McKEEBY: Pass the witness.

11 Thank you, Ms. Jones.

12 THE COURT: Thank you, Mr. McKeeby.

13 Mr. Greenfield.

14 CROSS-EXAMINATION

15 BY MR. GREENFIELD:

16 Q. Good morning, Ms. Jones.

17 A. Good morning.

18 Q. It sounds like you are representing to the
19 Court and the jury that you are pretty Facebook
20 savvy, is that fair?

21 A. You could say that.

22 Q. And in your position in management, were you
23 tasked with looking at social media infractions or
24 complaints of flight attendants?

25 A. Only if there was an infraction or a complaint

1 that would prompt me to look.

2 Q. About how many do you think you reviewed?

3 A. That's a loaded question. Probably --

4 Q. From 2015 to 2017, how many do you think you
5 reviewed?

6 A. Probably thousands.

7 Q. Thousands of complaints?

8 A. Posts --

9 Of posts. Okay.

10 A. -- that were brought forward.

11 Q. Can you break that down to about how many
12 complaints?

13 A. Hundreds of complaints.

14 Q. And would you be tasked with reviewing the
15 complaints for all the different bases?

16 A. Not necessarily, no.

17 Q. Just if it involved an employee at your base?

18 A. Correct.

19 Q. And that was Phoenix, correct?

20 A. I was Denver and Phoenix --

21 Q. Denver.

22 A. -- based.

23 Q. Denver. I apologize. Thank you.

24 MR. GREENFIELD: Sorry, Ms. Willis.

25

1 BY MR. GREENFIELD:

2 Q. I believe you said it was Denver, is that
3 correct?

4 A. In 2017, it would have been Denver-based.

5 Q. Okay. And how many bases are there?

6 A. There's 11 what we call brick-and-mortar bases,
7 and there's two satellite bases which are like
8 remote bases.

9 Q. So you are saying hundreds of complaints just
10 at your base alone regarding social media
11 infractions?

12 A. That touched my base alone, yes.

13 MR. McKEEBY: Thank you. No more
14 questions.

15 THE COURT: All right. And Mr. Pryor.

16 MR. PRYOR: Not a thing, your Honor.

17 THE COURT: So do you have any questions
18 based on Mr. Greenfield's questions, Mr. McKeeby?

19 MR. McKEEBY: No.

20 THE COURT: Any need to keep this witness?
21 We can excuse you back to your seat.

22 THE WITNESS: Thank you.

23 THE COURT: Okay. Next witness for
24 Southwest.

25 MR. McKEEBY: Southwest calls Denise

1 Gutierrez.

2 THE COURT: Okay. You may do so.

3 (The witness entered the courtroom.)

4 THE COURT: Ms. Gutierrez, you can come on
5 in and approach the witness box up here.

6 Before you get seated, we will need to
7 swear you in. So if you could raise your right hand
8 and Mr. Frye will give you the oath.

9 (DENISE GUTIERREZ was duly sworn by the
10 Clerk.)

11 THE COURT: Okay. And I will just ask for
12 some space between questions from lawyers and
13 answers, and answers and questions. That way, if
14 there is an objection, I can rule on it before you
15 answer.

16 You can proceed, Mr. Morris.

17 DIRECT EXAMINATION

18 BY MR. MORRIS:

19 Q. Hello, Ms. Gutierrez.

20 A. Hi. Good morning.

21 Q. Ms. Gutierrez, who is your current employer?

22 A. My current employer is JP Morgan Chase.

23 Q. And what do you at JP Morgan?

24 A. I do trend and theme analysis on conduct
25 activity for the firm.

1 Q. And prior to working at JP Morgan, who was your
2 employer?

3 A. Southwest Airlines.

4 Q. And how long were you employed by Southwest
5 Airlines?

6 A. Just shy of ten years, like nine and a half
7 years.

8 Q. And what positions did you hold at Southwest?

9 A. I was the -- I was an employee relations senior
10 investigator.

11 Q. Was that your position throughout your tenure
12 at Southwest?

13 A. Yes, through the majority of my tenure there,
14 yes.

15 Q. And what were your duties at Southwest?

16 A. I was responsible for conducting investigations
17 related to the harassment, sexual harassment,
18 discrimination and retaliation policy.

19 Q. And can you tell me a little bit about employee
20 relations in general, what kind of things did they
21 do at Southwest?

22 A. So when we would get allegations that someone
23 may have engaged in behavior that potentially
24 violated the policy related to harassment, sexual
25 harassment, discrimination and retaliation, we were

1 required to do an investigation, which meant that we
2 would interview individuals that might have relevant
3 information to the alleged behavior. We would also
4 look at any additional information that might be
5 relevant to those allegations.

6 Based on that information, we would assess
7 whether there was policy violation or not.

8 Q. And did you work with the labor relations
9 department in conducting these investigations?

10 A. Yes. If it did involve a union employee, we
11 would, yes.

12 Q. Are you familiar with an investigation into a
13 complaint made by Audrey Stone regarding Charlene
14 Carter?

15 A. I am, yes.

16 Q. And how did you become familiar with that?

17 A. I don't 100 percent recall, but based on what I
18 can recall, I believe that there was an email sent
19 to the employee relations email, distribution group
20 email, related to some concerns that Audrey Stone
21 had related to some Facebook messages that she had
22 received from Charlene Carter.

23 Q. And when you learned about the investigation,
24 were you familiar with Ms. Carter?

25 A. I was not.

1 MR. MORRIS: If we can pull up Exhibit 76.

2 THE WITNESS: Hold on one second. I have
3 got to put on my glasses.

4 BY MR. MORRIS:

5 Q. Sure.

6 A. Okay.

7 Q. If you look at the top of this email, it looks
8 like it's an email from you to Ed Schneider.

9 Do you recall this email?

10 A. I do, yes.

11 Q. Is this you reaching out to him to say that you
12 are going to assist with the investigation?

13 A. That is correct, yes.

14 MR. MORRIS: We can take that down.

15 BY MR. MORRIS:

16 Q. So what did you do in connection with the
17 investigation into Ms. Carter?

18 A. I'm sorry, I didn't hear that.

19 Q. What did you do in connection with the
20 investigation into Ms. Carter?

21 A. So I partnered with the in-flight base to
22 conduct a fact-finding. So that's usually how
23 employee relations worked with in-flight, was that
24 in-flight would lead the fact-finding, and employee
25 relations would partner with them in the

1 fact-finding. So we would interview all of the
2 parties together.

3 Q. So did you attend the fact-finding meeting with
4 Ms. Carter?

5 A. I did, yes.

6 Q. And what was your role in that fact-finding
7 meeting?

8 A. With Ms. Carter?

9 Q. Yes.

10 A. My role was as an active participant in asking
11 questions related to the alleged behavior with
12 Audrey Stone. My role was specifically to the
13 behavior specific to the harassment, sexual
14 harassment, discrimination and retaliation policy.

15 Q. And did you attend a fact-finding meeting with
16 Ms. Stone?

17 A. I believe I did, yes.

18 Q. And was your role the same in that meeting as
19 well as it was in Ms. Carter's fact-finding meeting?

20 A. More or less. You know, Audrey Stone's was
21 really to get much more information as to what her
22 concerns were relative to the allegation she was
23 making to Ms. Carter.

24 Q. Did you make any -- let me step back.

25 When you're participating in an investigation,

1 do you typically summarize your findings in some
2 way?

3 A. After we've conducted all of the interviews,
4 you mean?

5 Q. Correct.

6 A. Yes. Usually we would put together a summary
7 of sorts determining our outcome.

8 Q. Do you recall making any conclusions in this
9 case regarding the violations of the harassment
10 policy?

11 A. Yes, I do recall making some determinations.

12 MR. MORRIS: Let's look at Exhibit 108,
13 please.

14 BY MR. MORRIS:

15 Q. If you look down at the bottom, and it goes on
16 to the next page.

17 Does this document look familiar to you?

18 A. It does, yes.

19 Q. And what is this document?

20 A. It would be just a summary of my findings
21 related to the harassment, sexual harassment,
22 discrimination, retaliation policy.

23 Q. And looking at this document, and based on your
24 recollection, what were your findings in this case
25 regarding Ms. Carter?

1 A. Well, you know, to be fair, I don't fully
2 remember, since it has been a little while since
3 then.

4 But looking at this email, I can see that my
5 findings were partially supported to the allegations
6 that Ms. Stone made against Ms. Carter.

7 Q. Can you explain what you meant by "partially
8 supported"?

9 A. Yes. So to the best of my recollection,
10 Ms. Stone had made, you know, several allegations
11 related to the material that she received from
12 Ms. Carter via Facebook. And we could only
13 substantiate that part of those allegations were
14 supported to violate the harassment, sexual
15 harassment, discrimination and retaliation policy.

16 So that's what we meant by "partially
17 supported," what I meant by "partially supported."

18 Q. Do you recall what those posts were that
19 partially supported a violation of that policy?

20 A. If I recall, I believe it was related to some
21 pictures that were sent of women who were dressed
22 like vaginas.

23 Q. And you thought that supported a violation of
24 the harassment policy?

25 A. I did, yes.

1 Q. Did you make the decision to terminate
2 Ms. Carter?

3 A. No.

4 Q. Do you know who made that decision?

5 A. That would be, you know, the in-flight base
6 management in collaboration with labor relations.

7 Q. And when you are involved in an investigation
8 like Ms. Carter's, is it normally your role to make
9 a determination as to an appropriate discipline?

10 A. No.

11 Q. Who makes that decision?

12 A. It would be leadership in conjunction with, if
13 it's a union employee, labor relations. If it's a
14 non-union employee, usually their HR representative.
15 But employee relations had no role in determining
16 corrective action.

17 Q. So it's fair to say that your role was just
18 assessing whether there had been a violation of the
19 policy?

20 A. That's correct.

21 MR. MORRIS: Pass the witness.

22 THE COURT: All right. Mr. Greenfield.

23 CROSS-EXAMINATION

24 BY MR. GREENFIELD:

25 Q. Good morning, Ms. Gutierrez.

1 A. Good morning, Mr. Greenfield, is that right?

2 Q. It's Mr. Greenfield. I represent the Union.

3 A. Okay.

4 Q. Okay?

5 Did anyone at the Union try to improperly
6 influence your investigation into the matter?

7 A. No, not that I can recall.

8 Q. And when conducting an investigation, are there
9 different rules for different employees?

10 A. No, I don't believe so.

11 Q. Would you treat an investigation differently
12 because the complaint was made by a union executive
13 board member?

14 A. No.

15 MR. GREENFIELD: Pass the witness.

16 MR. HILL: No questions, your Honor.

17 THE COURT: Okay. Any need to reserve her
18 for a recall?

19 With that, you are excused as a witness.
20 Thank you for your testimony.

21 THE WITNESS: Thank you.

22 (The witness exited the courtroom.)

23 THE COURT: Southwest, do we have another
24 witness to call?

25 MR. McKEEBY: We do. Mike Sims.

1 (The witness entered the courtroom.)

2 THE COURT: Mr. Sims, you can come on up
3 here and approach the witness box.

4 Before you get into the box, can I have
5 you raise your right hand. We're going to swear you
6 in.

7 (MIKE SIMS was duly sworn by the Clerk.)

8 THE COURT: Okay. Now you can take a
9 seat.

10 THE WITNESS: Thank you, sir.

11 THE COURT: And Mr. Sims, I ask all
12 witnesses if they could help us keep some space
13 between questions that the lawyers that ask you and
14 your answers, and then ask the lawyers to keep space
15 between your answer and their question.

16 THE WITNESS: Yes, sir.

17 THE COURT: That way we can keep a clean
18 record and I can rule on any objections from the
19 lawyers before you answer.

20 THE WITNESS: Yes, sir.

21 THE COURT: You can proceed, Mr. McKeeby.

22 MR. MCKEEBY: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MCKEEBY:

25 Q. Will you please state your name for the record.

1 A. Michael Sims. S-I-M-S.

2 Q. How are you currently employed?

3 A. I'm currently employed at Southwest Airlines as
4 a senior director of in-flight operations.

5 Q. How long have you been in that position?

6 A. Since 2017.

7 Q. What did you do before that?

8 A. Regional director, in-flight operations.

9 Q. Tell the jury, what's the difference between a
10 senior director and a regional director?

11 A. Well, a regional director, in that instance, I
12 was managing flight attendant bases across the
13 United States. At one point I had the eastern part
14 of the United States, at another point I had the
15 western part of the United States.

16 I was promoted to senior director in 2017 where
17 that encompassed the entire area of the United
18 States for in-flight bases, which now are 11 bases,
19 but back then it was 10.

20 Q. When in 2017 did you receive that promotion?

21 A. That was mid summer.

22 Q. Okay. I asked that because I want to focus on
23 your job prior to that time.

24 And so am I right that prior to that time, you
25 were a regional director?

1 A. That is correct, sir.

2 Q. I understand you explained a little bit about
3 the breakdown and the difference between a senior
4 and regional director.

5 But as a regional director, can you generally
6 describe your job duties to the jury.

7 A. Yes, sir.

8 Regional director primarily is focused with
9 ensuring that our flight attendants are meeting
10 company standards in terms of delivering customer
11 service.

12 So my job included insurance of the customer
13 experience for the people that fly Southwest
14 Airlines in terms of how our flight attendants
15 deliver it.

16 It also consisted of ensuring overall job
17 performance of our flight attendants, and then also
18 ensuring that our in-flight bases, which were
19 scattered throughout the United States, were running
20 effectively.

21 Q. Have you ever been a flight attendant with
22 Southwest Airlines?

23 A. Yes, sir. I was hired as a flight attendant in
24 November of 1996. Served as a flight attendant from
25 1996 to June of 2007.

1 Q. Were you a member of the Union during that time
2 period?

3 A. Yes, sir. I was a member of transport workers
4 Union Local 556, as all flight attendants are.

5 In addition, I was elected as a union officer
6 in 2003. I was elected as executive board member at
7 large, and at that point, I was appointed to run the
8 union office, if you will, and process employee
9 grievances.

10 So I was full-time in the union from 2003
11 through 2006. Excuse me, until April of 2006.

12 Q. Thank you.

13 Mr. Sims, it sounds like, given your
14 background, you are pretty knowledgeable about Local
15 556, I take it?

16 A. Yes, sir.

17 Q. I just kind of want to get some explanation so
18 that the jury understands the relationship between
19 Southwest Airlines and Local 556 in terms of their
20 interactions.

21 Can you just provide sort of a general
22 description of that?

23 A. Yes. Overall, the interactions between
24 Southwest Airlines and Transport Workers Union Local
25 556 is very professional and it's amicable.

1 There are disagreements, as you can imagine
2 when it comes to collective bargaining and
3 collective bargaining agreements and their
4 administration.

5 But Southwest is very unique in the fact that
6 we have been able to work with the union through the
7 processes that allow us to resolve disputes through
8 the good times and the bad times.

9 Q. Fair enough.

10 How about in terms of the structure of the two
11 entities. Do they have the same, for example,
12 policies and laws -- I mean policies and procedures?

13 A. Oh, no, sir. It's important to note that TWU
14 Local 556 and Southwest Airlines are separate
15 entities.

16 Q. What does that mean?

17 A. Excuse me?

18 Q. What do you mean by that?

19 A. Well, by "separate entities," I mean that
20 Southwest Airlines is the company that we know that
21 operates aircraft and flies customers around the
22 country.

23 TWU Local 556 is a separate organization that
24 has its own governance, has its own budget, has its
25 own operating rules, bylaws, et cetera.

1 What makes the two in common is while they are
2 separate entities, TWU Local 556 is operated by
3 Southwest Airlines employees.

4 Q. Understood. Thank you for that clarification.

5 As a regional director of in-flight operations,
6 did you preside over something called a Step 2
7 hearing?

8 A. Yes, sir. At that time, I presided over the
9 majority of them, if not all.

10 Q. All of them within your region?

11 A. Yes, sir. If not in the region, over the
12 whole -- the entire group of bases. It just depends
13 on where we were in terms of our org structure at
14 that point.

15 So we did some re-orgs and we were a little
16 short-handed for a while. How is that?

17 Q. Understood.

18 How about the spring of 2017, did you preside
19 over --

20 A. Yes.

21 Q. -- Step 2 meetings at that time?

22 And we will get it, but you presided over
23 Ms. Carter's Step 2 hearing?

24 That is correct, yes, sir.

25 MR. HILL: Running objection on relevance

1 and 403.

2 THE COURT: I will grant you that running
3 objection.

4 I will overrule it and you can answer the
5 question and continue.

6 BY MR. McKEEBY:

7 Q. Before we get into the specifics of Ms. Carter,
8 can you briefly explain to the jury what a Step 2
9 hearing is?

10 A. Well, a Step 2 hearing is what we would
11 consider the beginning of an appeal process for an
12 employee who has found themselves in disagreement
13 with company action when it comes to issuing
14 discipline.

15 So under the Collective Bargaining Agreement,
16 our contract with Transport Workers Union Local 556,
17 we have an appeals process that allows decisions to
18 be further reviewed and analyzed and checked for
19 additional information.

20 So the Step 2 hearing, we call it Step 2,
21 because Step 1 is, Hey, I don't like or I disagree
22 with this decision, so Step 1, I file for appeal.

23 Step 2 is where the appeal is heard at my level
24 to review what transpired at the in-flight base
25 level by usually the decision made by base

1 leadership.

2 Q. Now, again, speaking generally, do you have any
3 particular involvement with the grievance prior to
4 the Step 2 hearing?

5 A. No, sir.

6 Q. I think I asked you, but were you involved in
7 Ms. Carter's Step 2 hearing?

8 A. I was involved in her Step 2 hearing, yes, sir.

9 Q. What did you do, if anything, to prepare for
10 the Step 2 hearing in Ms. Carter's case?

11 A. It was pretty standard in terms of preparation.
12 So we have a department in Southwest Airlines, it is
13 our labor relations department. They are tasked
14 with managing the administrative part of an appeal.

15 So they sent me notice that Ms. Carter wanted
16 to appeal her termination, so they sent me the
17 information surrounding the circumstances.

18 So that would be, you know, correspondence or
19 notes or anything that had to do with the decision
20 that they made at that level.

21 So I reviewed that prior to going in and I
22 reviewed her termination letter.

23 Q. Okay. Did part of that -- part of the
24 materials that you reviewed include the videos that
25 we've discussed in this case, I will tell you?

1 A. Yes, sir.

2 Q. Did you watch the videos?

3 A. I did not watch them prior to her meeting with
4 me, but I was aware of them. I saw that they were
5 stills. I received pictures of the videos and then
6 saw the videos later.

7 Q. Okay. That was part of the labor relations
8 file that you mentioned?

9 A. Yes, sir.

10 Q. The still photos?

11 A. Yes, sir. Screen shots.

12 Q. Screen shots, sorry. Thank you.

13 When did you review, or when did you watch the
14 videos?

15 A. Ah, somewhere during -- there is a 10-day
16 process after our meeting, and that's when we have a
17 decision time period. I saw it during that and also
18 saw them in preparation for an arbitration that took
19 place later.

20 Q. All right. Well, then let's continue on the
21 timeline before we get to that.

22 So to kind of set the table, if you will,
23 for -- where was Ms. Carter's Step 2 hearing? Where
24 did it take place?

25 A. We held the meeting at Southwest Airlines

1 headquarters. We have designated conference rooms
2 for those meetings, and she and her union
3 representatives met us there.

4 Q. In person?

5 A. Yes, sir.

6 Q. Do you recall who her union representative --
7 you said plural representatives, more than one?

8 A. Yes, sir.

9 Q. Do you recall who that was?

10 A. Yes, sir.

11 Q. Who?

12 A. There was two. Becky Parker, P-A-R-K-E-R, and
13 Beth Ross, R-O-S-S.

14 Q. Okay. Did Carter present any documents during
15 the Step 2 hearing?

16 A. Yes, she did. She presented numerous
17 documents.

18 Q. Okay.

19 MR. McKEEBY: If you can pull Exhibit 118.

20 BY MR. McKEEBY:

21 Q. Do you recognize this document, Mr. Sims?

22 A. Yes, sir, I do.

23 Q. Tell the jury what this is.

24 A. What this is, is a list of the information that
25 she provided for us in terms of the documents.

1 And some of them were -- well, they were all
2 provided by her. Some were articles from the
3 Internet. Some were information that she felt was
4 pertinent to her case. This is just a collective
5 list of those documents.

6 Q. Okay. And did she actually come to the meeting
7 and present this packet to you?

8 A. Yes, she did present a packet. Yes, that is
9 correct.

10 Q. And I think -- are there different -- this an
11 index of 10 documents. Are there more than that?

12 A. I think there are.

13 Q. I do, too.

14 So if you will go to 118.30, what is that
15 document?

16 A. That's a continuation of the previous list.

17 Q. And what about 118.61, if you could pull that.

18 A. Again, that is continuation of the previous two
19 lists.

20 Q. So more documents?

21 A. Yes, sir.

22 Q. Okay. And, I'm sorry, I forgot if you have
23 done this, but can you just kind of generally
24 describe the content?

25 I mean, it is a long, lengthy exhibit, and I

1 don't want to walk through step-by-step with you.
2 But can you just describe generally to the jury what
3 this packet of documents consisted of?

4 A. Yes. During a Step 2 meeting -- and this is,
5 again, when they are appealing, in Ms. Carter's
6 case, the termination -- we encouraged them to bring
7 any information that they feel is pertinent or may
8 be information that wasn't considered or information
9 that would provide additional context.

10 So in Ms. Carter's case, she brought to me
11 numerous documents that she believed would be
12 helpful to me in making a decision in her favor.

13 So it's pretty typical that the union and the
14 grievant bring additional information or
15 information, again, to provide additional context.

16 So this gave me an opportunity to learn a
17 little bit more about her point of view and her
18 thoughts on why she felt that her termination was
19 not reasonable.

20 Q. And during the Step 2 hearing, did you go over
21 the different documents that she provided?

22 A. Well, there were numerous documents, so what we
23 agreed was that we would label them so I could keep
24 track of them, and then I committed to Ms. Carter
25 that I would look at them after the meeting.

1 Because I felt that the documents were
2 important to her, therefore, they were important to
3 me, but I also wanted to hear her speak and tell me
4 her point of view.

5 And there just wasn't enough time to read 30
6 documents because some of them were two or three
7 pages each. So I did review them after our meeting
8 a couple of days after we met.

9 Q. Did you go over the documents in terms of
10 asking Ms. Carter what they were?

11 A. Yes.

12 Q. And that was during the Step 2 grievance?

13 A. Yes, sir.

14 So how it worked was she would hand me a
15 document and say, This is an article on the AFL-CIO
16 as an example.

17 And then I would say, Okay, let's mark this as
18 an AFL-CIO document.

19 And then we would set it aside and then move on
20 to the next one and the next one after that.

21 MR. McKEEBY: Okay. You can take that
22 down.

23 BY MR. McKEEBY:

24 Q. Was there anything else with Southwest Airlines
25 at the Step 2 hearing?

1 A. Yes. When we conduct Step 2 hearings, we have
2 a representative from our labor relations
3 department, as they act as the case manager, if you
4 will.

5 And in this case we had a manager by the name
6 of Melissa Burdine, B-U-R-D-I-N-E.

7 Q. And she's with labor relations?

8 A. She was. She has since left the company.

9 Q. What was her role at the Step 2 hearing?

10 A. Her role was to ensure that the documents were
11 present. She took notes and then she also provided
12 counsel to me after the meeting.

13 MR. McKEEBY: If we could go to
14 Exhibit 119.

15 MR. HILL: Objection. The ones discussed
16 this morning.

17 THE COURT: On 119?

18 MR. McKEEBY: Should I move to admit
19 first?

20 THE COURT: Yes.

21 MR. McKEEBY: Move to admit and publish
22 Exhibit 119.

23 THE COURT: Okay. I have the objections
24 from this morning. I'm overruling those and
25 admitting 119.

1 You can publish.

2 (The referred-to document was admitted
3 into evidence as Trial Exhibit 119.)

4 BY MR. McKEEBY:

5 Q. The first page of 119 is an email, correct?

6 A. Yes, sir.

7 Q. Can you describe to the jury what that email
8 is?

9 A. This is an email from the labor relations
10 manager, Melissa Burdine, sending it to me on
11 April 6th -- that was a couple of days after the
12 hearing -- her notes that she typed during our
13 hearing.

14 And she just mentioned here that -- and this
15 did happen -- her laptop that she was working on at
16 the time, it powered down for a few minutes, but she
17 was able to plug it in. We took about a three- or
18 four-minute break while she plugged it in.

19 And then "I will send the labor recap to you
20 next week."

21 Q. And then if you go to the next page, are those
22 her notes?

23 A. Yes.

24 MR. McKEEBY: You can take that down for
25 now.

1 BY MR. McKEEBY:

2 Q. Okay. You go through the documents. You
3 indicated that she handed them to you and that you
4 then later reviewed them.

5 What did you do next during the Step 2
6 grievance hearing?

7 A. After the hearing, or are we still during?

8 Q. No, no, no. Still in the hearing. You have
9 gone through the documents. I understand you didn't
10 go through each one, but there was a labeling
11 process during the hearing, as I understood it?

12 A. Yes.

13 Q. Okay. So what happened next at the hearing?

14 A. At the hearing it was a pretty typical hearing.
15 And what I did was I asked Ms. Carter why she felt
16 that the termination was unjust or why she believed
17 that our company was making a mistake.

18 Q. What do you recall her saying in response to
19 that question?

20 A. Well, she was in a dispute with Transport
21 Workers Union Local 556. And then during the --
22 after we went through the exhibits, we had more
23 discussion where she gave me her point of view of
24 why she felt that she wanted her job back.

25 Q. What do you recall generally her saying about

1 that?

2 A. Well, she asked me, Can I have my job back?

3 Q. During the Step 2 hearing, did she admit
4 sending the video messages to Ms. Stone?

5 A. Yes. There was never any dispute between us
6 that they were sent and she did acknowledge that she
7 sent them.

8 MR. McKEEBY: 119 again.

9 BY MR. McKEEBY:

10 Q. Was Ms. Carter apologetic at all during the
11 Step 2 hearing?

12 A. I think she was -- she appeared to be
13 remorseful at that hearing and said that she had
14 gone a little over the top.

15 MR. McKEEBY: Let's look at 119.5. I'm
16 sorry. 15, I think. Yes, 15. It's at the bottom
17 here where it says "the last three weeks," the last
18 bullet. "The last three weeks." There we go.

19 BY MR. McKEEBY:

20 Q. Do you see that where it says "the last three
21 weeks"? Can you read that to the jury, Mr. Sims?

22 A. Yeah, starting -- okay.

23 "The last three weeks I could have made a
24 better choice regarding Audrey. I don't know why
25 they won't let us know. This has nothing to do with

1 Southwest. This was something about the Women's
2 March, because we paid for it and they didn't say
3 anything to us before they went."

4 Q. Is that the -- that's not testimony, she wasn't
5 under oath, but is that the statement that you were
6 recalling a moment ago?

7 A. Yes.

8 MR. McKEEBY: And if you go to 119.16.
9 About halfway down, where it says "cc." Yes, that's
10 the one.

11 BY MR. McKEEBY:

12 Q. Is this where she's asking for her job back?

13 A. Yes. She directly asked me, Can I have my job
14 back, because I do love my job and company.

15 Q. And did you also have a discussion during the
16 Step 2 hearing about her sending other Facebook
17 messages to other Southwest employees?

18 A. Yes.

19 Q. What do you recall about that?

20 A. I recall that she was --

21 MR. HILL: Objection, relevance.

22 THE COURT: Overruled.

23 You can answer.

24 THE WITNESS: I recall that she was very
25 passionate about her beliefs and her values, and she

1 wanted to share those beliefs and values with other
2 people.

3 MR. McKEEBY: Let's look at 119.17. The
4 next page, I guess. The one that says "cc" about
5 midway through, "I promise."

6 THE WITNESS: Yes, sir.

7 BY MR. McKEEBY:

8 Q. Does that refresh your recollection as to what
9 was said about further Facebook posts?

10 A. Yes.

11 Q. I'm sorry, messages?

12 A. Yes.

13 She's saying here "I promise it will never
14 happen again. If they don't like what's said, I
15 won't do it."

16 Q. And then at the top of the page, where it says
17 "BP," who do you know who that is?

18 A. BP are the initials for Becky Parker, who was
19 one of her union representatives.

20 MR. McKEEBY: And if you could blow that
21 up.

22 BY MR. McKEEBY:

23 Q. And that very last line of her question is
24 what?

25 A. "Can I trust" -- let me back up.

1 This is where her union representative turns to
2 Ms. Carter and asks, "Can I trust you won't do it
3 again?"

4 Q. Okay. And what did she say?

5 A. "Yes. I won't."

6 MR. McKEEBY: You can take that down now.

7 BY MR. McKEEBY:

8 Q. About how long was the Step 2 hearing?

9 A. I think it was between 90 minutes and almost
10 two hours.

11 Q. So you mentioned something earlier about 10
12 days. What was the significance of that?

13 A. Well, as I mentioned earlier, Southwest
14 Airlines and the flight attendant union have an
15 agreement, and in that agreement, which is the
16 contract, there is an appeal process that is laid
17 out.

18 So we start with Step 1. Then we have Step 2.
19 But then there are days that are designated between
20 those steps for the company or the union to gather
21 additional information.

22 So in this case, we take, in Step 2, 10
23 business days afterwards to review all of the
24 information, and then we have that time period to
25 formulate our decision back to the union.

1 Q. I think you have alluded to a couple of things.
2 But in this case, what did you do during that
3 10-day period?

4 A. During that 10-day period, I reviewed all of
5 the documents that Ms. Carter supplied. I conferred
6 with labor relations and, you know, read through
7 some other things about -- just on my own about how
8 things were in the current state, you know, of the
9 times. And that's how I came to make my decision.

10 Q. When you say you conferred with labor
11 relations, do you recall with whom you conferred?

12 A. That would have been the manager, Melissa
13 Burdine. Possibly her leader at the time who has
14 retired, Tammy Schaffer.

15 Q. Okay. And did I understand your testimony
16 earlier correctly that you viewed the videos during
17 that 10-day window?

18 A. Yes, sir.

19 Q. Why did you do that?

20 A. I just wanted to know.

21 Q. What was your reaction when you saw the videos?
22 By that time you had gone through the Step 2
23 hearing, you had heard from Ms. Carter, correct?

24 What was your reaction?

25 A. The videos were very impactful to me. I hated

1 them. They were ugly. They were disgusting.

2 That's just the tip of the iceberg of how it
3 made me feel. It made me feel sick.

4 Q. Mr. Sims, I take it that part of the review
5 process at the Step 2 hearing involves your
6 assessment as to the decision that in this case
7 Mr. Schneider made?

8 A. Yes.

9 Q. And did you agree with that decision?

10 A. I agreed with Mr. Schneider's decision.

11 Ms. Carter's actions under the Southwest
12 Airlines policy, procedures and our overall mission,
13 she was -- she was terminated for good reason.

14 Q. Now, at the end of the Step 2 hearing, what
15 options did you have?

16 A. The agreement or the contract we have with the
17 Union gives me three options at the end of a Step 2.

18 The first option is I can just accept the
19 grievance, and just say, Union, you were correct, we
20 are going to restore her employment as if nothing
21 happened.

22 The second option I have is to offer a
23 settlement, meaning that in most cases we will
24 return them back to work but with some conditions,
25 you know.

1 And then the final option I have is what we
2 call -- I have the authority to deny the grievance,
3 which simply means it sends it to the next stage in
4 the process, which would be a Step 3.

5 Q. And which of these options did you arrive at?

6 A. After careful thought, I offered a settlement.

7 Q. And why did you -- what was the -- can you just
8 describe generally, I will show you the document in
9 a minute, but can you describe generally what you
10 mean by that. What did you do?

11 A. Ms. Carter asked me if she could --

12 MR. HILL: Objection.

13 THE COURT: I'll overrule.

14 You can answer.

15 MR. HILL: And the settlement
16 communication.

17 THE COURT: Yes, overruled.

18 You can answer.

19 BY MR. McKEEBY:

20 Q. Explain generally what the proposal was, if you
21 will.

22 A. Well, Ms. Carter asked me for her job back, and
23 I decided to help her get her job back.

24 Q. And why did you do that?

25 A. I wanted to give her another chance.

1 Q. You said you agreed with the decision. Why did
2 you decide to give her her job back?

3 A. Well, she was fired for all of the right
4 reasons, but the appeals process allows us to step
5 back a little bit and review.

6 So while she was fired for all of the right
7 reasons, she convinced me in the Step 2 that she
8 would be different. And I looked at the fact that
9 she was a long-term employee, she had a good
10 employee record, and I just, at the end of the day,
11 wanted to give her another chance.

12 Q. And I think in the context of this case, we
13 have been referring to something called the last
14 chance agreement. Is that the proposal to which you
15 are referring?

16 A. Yes, sir.

17 MR. McKEEBY: Can you pull up Exhibit 40?
18 It's in evidence.

19 BY MR. McKEEBY:

20 Q. Can you identify this document for the jury?

21 A. Yes, sir. This is the last chance agreement
22 that I authorized to be offered to Ms. Carter.

23 Q. And is this the same -- is this a form that you
24 had used in other cases?

25 A. Yes.

1 Q. Let's kind of go over the terms so that the
2 jury understands.

3 The first bullet -- I'm going to have them blow
4 it up for you to make it easier to read.

5 A. Thank you.

6 Q. You are welcome.

7 Just explain to the jury what that means.

8 A. Well, this was me granting Ms. Carter's
9 request, and the company is going to reinstate her
10 employment, give her her job back.

11 Q. What does "no loss of seniority" mean?

12 A. What that means is, in the airline world or the
13 industrial world, if you will, where there is union
14 agreements, how we schedule people for their work is
15 based on seniority, or their length of service.

16 So they are able to bid for schedules or bid
17 for vacation, or get other possible other things
18 based on their length of service or their seniority.

19 So in this case, we didn't ding her, if you
20 will, with her seniority. Her seniority was
21 restored, or left status quo, excuse me.

22 Q. Okay. The next bullet says, "You will receive
23 Konop pay."

24 What does that mean?

25 A. What that meant was we were not offering any

1 back pay as if she had stayed at the company and was
2 working.

3 I made that decision because in reviewing her
4 work history, she was not working that much. And
5 also, this was just another way of just saying,
6 we're going to agree to there will be Konop pay.

7 She really wasn't eligible for back pay anyway,
8 since there was no work completed.

9 Q. What do you mean, no work completed?

10 A. Flight attendants have a lot of flexibility to
11 modify their schedule and they can work pretty much
12 as they want in the guardrails of federal -- of
13 aviation regulations, or they can work as little as
14 they want.

15 So at that period, Ms. Carter wasn't working
16 enough to warrant a check, if you will, for coming
17 back to work.

18 MR. McKEEBY: Okay. Let's tick down to
19 the next bullet.

20 BY MR. McKEEBY:

21 Q. What does that mean?

22 A. So I reduced her termination to a 30-day
23 suspension. So what that meant was I reinstated her
24 employment, but we had to reconcile this event
25 because she violated company policy. She did some

1 things that were warranting termination of
2 employment.

3 So just to reconcile this under our work
4 conduct rules, I added we would just convert that
5 termination to a 30-day suspension, which is pretty
6 innocuous here because she had already served that
7 suspension, if you will. So it was just something
8 that would be reflected in her file, her employment
9 file.

10 MR. McKEEBY: Let's tick down to the next
11 one.

12 BY MR. McKEEBY:

13 Q. Can you just tell the jury what that means?

14 A. Yes. We pay -- most airlines or other
15 employers pay by the hour, so you are paid 40 hours
16 a week, for example.

17 We use a term called TFP, trips for pay.

18 Not necessary to know all of that, what that
19 means. But what we do is when somebody is
20 terminated, they accrue vacation time.

21 So once somebody is terminated, we know they
22 are not going to take that vacation time, so we just
23 pay out that vacation in a check to reconcile it.

24 So on return to work in this case, we gave her
25 the option, you can keep that money we paid to you

1 for your earned vacation, but if you want to
2 reinstate those vacation days, then you will just
3 pay us back and we will put that back into your
4 vacation bank.

5 Q. Thank you, Mr. Sims.

6 MR. McKEEBY: Let's tick down to the next
7 bullet.

8 BY MR. McKEEBY:

9 Q. What does that mean?

10 A. "Any record improvement will be delayed for a
11 period of time equal to the time from termination."

12 Okay. So in the flight attendant contract, we
13 have a section that administers our attendance
14 policy.

15 So in layman's terms when a flight attendant
16 calls in sick and that is not covered by a doctor's
17 note, we assess them points. Okay? And they have
18 an ongoing record of attendance points that they
19 accrue for absenteeism.

20 In this case, what we did was when we reinstate
21 somebody, we always restart the record improvement
22 clock, which means that when you accrue points, you
23 have the ability several times through the year to
24 have those points removed. And we call that record
25 improvement.

1 So this is pretty simple here. All this is, is
2 clarifying that we will not use that record
3 improvement mechanism for the time that she was gone
4 because there is really nothing to improve, since
5 she was gone.

6 Q. Okay.

7 MR. McKEEBY: Let's go to the next one.

8 BY MR. McKEEBY:

9 Q. So you, if I understand correctly, you were
10 going to have her sign an attachment?

11 A. Yes, sir.

12 Q. Can you generally describe that attachment?

13 A. It's a -- it's a general legal release, and it
14 is a way to put this issue to bed. It is we sign
15 the release and we are done.

16 Q. Was that common in the context of last chance
17 agreements you had provided to other employees?

18 A. Yes.

19 Q. Let me ask you this. Would the release have
20 still permitted -- if she had signed the release,
21 would she still have been permitted to pursue a
22 claim against the Union Local 556?

23 MR. HILL: Objection, calls for a legal
24 conclusion.

25 THE COURT: I will allow it if he has

1 personal knowledge.

2 THE WITNESS: I'm not sure.

3 BY MR. McKEEBY:

4 Q. Let me help you.

5 MR. McKEEBY: Let's go to 40.3, and we
6 will flip back to this.

7 BY MR. McKEEBY:

8 Q. Paragraph 2. Can you just take a look at the
9 first -- look at how the -- what parties are being
10 released. The first is Southwest Airlines, and what
11 is AirTran?

12 A. AirTran is a former airline that was based in
13 Atlanta, Georgia, that Southwest Airlines acquired
14 in 2010, and we merged the AirTran operations and
15 employees into Southwest Airlines.

16 Q. So the Union is not mentioned here, correct?

17 A. No, sir.

18 MR. McKEEBY: Let's go back to 40.1. I
19 forgot what bullet we were on. Maybe -- yes.

20 BY MR. McKEEBY:

21 Q. The "in addition." What does -- can you
22 explain to the jury what that means?

23 A. This was intended to make it crystal clear that
24 moving forward, you need to comply with our company
25 policies.

1 "Any future violation of the Southwest Airlines
2 workplace bullying and hazing policing policy,
3 social media policy, or harassment, sexual
4 harassment, discrimination and retaliation policy
5 will result in termination."

6 So we wanted to have that in there to make it
7 very crystal clear our expectations moving forward.

8 Q. And she had committed during the Step 2 hearing
9 that she wouldn't do it, correct?

10 A. Yes, that is correct. She told me she wouldn't
11 do this anymore.

12 Q. Now, Ms. Carter -- if Ms. Carter has expressed
13 concerns that the company could terminate her
14 employment based on previous Facebook messages that
15 might have been uncovered, do you think those
16 concerns are legitimate?

17 A. No.

18 Q. Why not?

19 A. Well, the reason is, is the last chance
20 agreement is designed to draw the line and move
21 forward. Because you will see in the last chance
22 agreement, just reading it, it is designed to put
23 all of this to bed and call this resolved. So there
24 would be no need to even look to previous things
25 because we are past that, we are moving forward.

1 Q. Well, let's say someone had raised a complaint
2 about an old Facebook message that they had
3 uncovered and brought that to the company's
4 attention and it found its way to you.

5 How would that -- how would this agreement --
6 if she had signed it, of course -- how would that
7 have played out in that context?

8 A. It would have been pretty simple, from my point
9 of view, because we have a -- we refer to the last
10 chance agreement and its intent, and it was to move
11 forward, not to look backwards.

12 Q. All right. And did Ms. Carter lose her rights
13 under the Collective Bargaining Agreement to grieve
14 any discipline that she thought was unfair if she
15 had signed this agreement?

16 A. She did not release any rights under the
17 Collective Bargaining Agreement.

18 So that appeals process that I described, you
19 know, the Step 1, Step 2, that remains as part of
20 her ability to disagree or dispute any future
21 conflicts.

22 Q. Okay. Just for the sake of completeness, let's
23 go to the next -- or the remaining bullets. We will
24 kind of handle this somewhat quickly.

25 What is the next one on the list?

1 A. "Prior to reinstatement, you will be required
2 to meet with in-flight operations director Mike
3 Sims."

4 Q. Who is that?

5 A. That would be yours truly.

6 Q. What would -- what were you hoping to
7 accomplish with another meeting?

8 A. My intent there was to bring her back to my
9 office in Dallas with her union representatives,
10 welcome her back, and help set her course to move
11 forward.

12 Q. Okay. What about the next bullet about the 24
13 months, what does that mean?

14 A. It gave a life span to this document, the last
15 chance agreement.

16 So we were going to put this in her file so
17 everybody knew about the -- everybody who had a
18 business of need to know -- of her last chance
19 agreement. And then at the end of the 24 months, we
20 are done and it was -- it would be removed and
21 pulled out.

22 Q. Removed -- I'm sorry?

23 A. Removed from her file, if she requested it.

24 Q. What is the next bullet?

25 A. A pretty standard statement on criminal

1 history. That is, in the airline industry,
2 safety-sensitive employees are required to have a
3 10-year background check.

4 In her case, it wasn't necessary, because she
5 was not -- she was not an inactive employee, so
6 there was no need, but that is there in case that
7 the need comes up, it's required by the -- by the
8 Federal Government.

9 Q. Understood.

10 The next bullet looks like just an
11 administrative process in terms of --

12 A. Yeah. We give their company ID back to them.

13 And then "contacting crew planning." That is
14 our unit that builds work schedules. So we would
15 ask her to contact the crew planning so they could
16 build her work schedule to get her back started to
17 work.

18 Q. Okay. And then what is the significance of the
19 next bullet, the grievance, I guess, that's the
20 union grievance being withdrawn?

21 A. "The grievance regarding your termination will
22 be withdrawn and dismissed."

23 This again is designed to further reconcile
24 this issue and to have an understanding with all of
25 the parties, the Union and the company, that this

1 grievance has reached its conclusion, so it's --
2 terminated -- it's withdrawn.

3 Q. And then the last bullet, I guess that just
4 kind of restates the settlement agreement that you
5 referenced?

6 A. Yes, sir. That is just a summary of the
7 following pages, which was the settlement agreement
8 that states that the grievant is releasing the
9 company, Southwest Airlines, and is going to
10 discharge Southwest Airlines from claims that she
11 may have had then or anything that may have
12 resolved -- I mean arisen from her termination.

13 So it's a pretty standard summary.

14 MR. McKEEBY: Okay. You can take that
15 down.

16 BY MR. McKEEBY:

17 Q. Did you ever have any conversations with
18 Ms. Carter about the agreement to reinstate her?

19 A. No, sir. Our -- our agreement with the Union
20 is -- under the Collective Bargaining Agreement, is
21 the Union is her agent that represents her
22 throughout the grievance process.

23 And we do that to ensure fairness.

24 So I never had any direct conversations with
25 her because it wasn't -- she had union

1 representatives that were representing her. And had
2 she wanted to have conversations with me, she could
3 have asked her union. We could have arranged that.
4 Because we want to have union in the room, company
5 in the room at all times.

6 So I never had any conversations with her.
7 Pretty standard.

8 Q. Has that happened before in the context of last
9 chance agreements?

10 A. Yes.

11 Q. There have been questions, and then that
12 process that you just described occurred?

13 A. Yes. Many times during a last chance
14 agreement, we will get an inquiry from the union
15 wanting -- most of the time it's clarification, but
16 other times they may want to modify or propose
17 changing the language, if you will.

18 Q. So how did the agreement get to Ms. Carter, if
19 you know?

20 A. Typical process is our labor relations
21 department, in this instance, it was the manager,
22 Melissa Burdine, sent it directly to the Union for
23 them to review with Ms. Carter.

24 Q. Mr. Sims, what was your expectation with
25 respect to whether or not Ms. Carter would sign the

1 last chance agreement?

2 A. I thought she was going to sign it.

3 Q. Why did you think that?

4 A. She was very compelling when we met and she
5 asked me for her job back. And she made commitments
6 to her union and she made commitments in my presence
7 that she wouldn't do this anymore.

8 And I took it at face value and I thought, I'm
9 going to give her another chance. Because you
10 generally don't get chances or a do-over when you
11 send videos of aborted fetuses to people.

12 So I thought, okay, this is a risk, but I'm
13 going to offer her her job back. And I was -- I was
14 very convinced that not only would she get her job
15 back, it would put this to bed, this whole issue.

16 Q. I take it at some point you found out that she
17 declined the last chance agreement.

18 A. Yes, sir. Yes, sir.

19 Q. What was your reaction when you found that out?

20 A. I remember looking at my email and seeing a
21 message that she had declined, and I sat back in my
22 chair. I was floored, to say the least. I was
23 shocked. Because this -- this case was so unique
24 and there was so much at stake because of the level
25 of harassment, I thought, my goodness, she will take

1 her job back because this is what she wants and we
2 can have a do-over.

3 And when she didn't take her job back, I was
4 beyond surprised.

5 Q. Did you have any next steps to do when you
6 found that out? Was there anything else in the
7 process that you needed to complete?

8 A. No, sir. My role was complete because when she
9 declined -- because she has -- as I had my options
10 to offer resolution, she has options as well under
11 her Collective Bargaining Agreement to process
12 through the grievance process. So my role there was
13 complete.

14 Q. Mr. Sims, did you base any decision in
15 connection with Ms. Carter's employment on the fact
16 that she was a Christian?

17 A. No.

18 Q. Did you hold that against her in any way?

19 A. Absolutely not.

20 Q. Prior to the Step 2 hearing process, were you
21 aware that Ms. Carter was what we called in the
22 parlance of this case a union objector?

23 A. I did not know she was a union objector.

24 Q. Do you know -- did you know at that time what
25 that meant?

1 A. I do.

2 Q. What was your -- let me ask you this: Were you
3 aware of something called the recall process?

4 A. Yes, I was aware of that.

5 Q. What -- what -- what was your understanding of
6 the recall process?

7 A. Well, as I mentioned earlier, Southwest
8 Airlines and TWU are separate entities. And
9 Transport Workers Union is governed by elected
10 officers and they have their own set of bylaws and
11 constitution.

12 And their constitution has a section where if
13 they want to recall an officer, if you will, or, you
14 know, there is a mechanism for them to go through
15 this process as detailed in the TWU constitution to
16 recall one or more officers.

17 So at that point, that process was underway.

18 Q. And prior to the Step 2 hearing that you have
19 described, were you aware of Ms. Carter's
20 involvement in that recall process?

21 A. No.

22 Q. Now. During the Step 2 hearing, do I
23 understand correctly that you did become aware of
24 some of Ms. Carter's issues with union leadership?

25 A. Yes. She told me that she had been formally

1 objecting to the Union since 2013, her union
2 involvement and required membership.

3 Q. What does that mean?

4 A. Well, Southwest Airlines and the Union have
5 what we call a closed shop. That means that when
6 you become a Southwest Airlines flight attendant,
7 you fall under the Collective Bargaining Agreement
8 and you are represented by the Union.

9 The law -- I'm not a lawyer, by the way, so --
10 but the law does require -- excuse me -- does allow
11 people to object and opt out of union involvement.

12 And Ms. Carter had let me know that she was an
13 objector and was not a member, per se, as most of
14 the other flight attendants were members. Not all.

15 Q. And did her status as an objector or her
16 support of the recall process have anything to do
17 with any decision you made with respect to handling
18 her grievance?

19 A. No, it did not at all.

20 Q. Mr. Sims, are you Christian?

21 A. I am.

22 Q. What church do you go to?

23 A. I'm a member of First Baptist Church in
24 Midlothian, Texas.

25 Q. And can you just very briefly describe your

1 personal beliefs regarding abortion to the jury.

2 A. I am -- I'm pro life and very sympathetic and
3 compassionate to people that have been through what
4 Ms. Carter told me she had gone through because I am
5 very saddened. I'm saddened by abortion.

6 MR. McKEEBY: Your Honor, can we have a
7 quick sidebar?

8 THE COURT: You may.

9 (Thereupon, the following proceedings were
10 had at sidebar:)

11 MR. McKEEBY: I have been requested to
12 make an offer of proof on the arbitration award.

13 So what I would propose doing is asking a
14 few preliminary questions, and then have them object
15 to the award, and then we do an offer of proof.

16 THE COURT: Outside the jury?

17 MR. McKEEBY: Outside the jury.

18 THE COURT: So that makes sense because
19 it's almost time for our break.

20 So I will let you ask those predicate
21 questions. Obviously, I've ruled on keeping out the
22 arbitration award. So object, I will sustain, we
23 will break, and then we can stick around.

24 Can we do the offer of proof at the end of
25 the break, just because we have been the record for

1 quite a while?

2 MR. McKEEBY: Sure. That's fine with me.

3 THE COURT: Okay. Sounds good.

4 (Thereupon, the sidebar was concluded and
5 the following proceedings were held in open
6 court:)

7 THE COURT: Okay. Mr. McKeeby, you can
8 ask those questions we discussed.

9 BY MR. McKEEBY:

10 Q. Okay. Mr. Sims, I think you mentioned --
11 sorry. Some of the witnesses are overlapping a bit.
12 But I'm going to say that I think you mentioned that
13 there was an arbitration in connection with this
14 process?

15 A. There was an arbitration --

16 THE COURT: Hold on.

17 MR. HILL: Objection, limine.

18 THE COURT: Okay. I will overrule that at
19 this point.

20 BY MR. McKEEBY:

21 Q. Explain to the jury what the arbitration
22 involved.

23 MR. HILL: Objection, limine.

24 THE COURT: I will overrule.

25 You can answer.

1 THE WITNESS: Yes, sir.

2 Again, as I mentioned earlier, in the
3 agreement that we have with the Union, there is an
4 appeals process and there are several steps in the
5 process.

6 We are governed by something called the
7 Railway Labor Act that requires airlines that are
8 under the -- companies that are under the RLA to
9 have an internal mechanism to manage disputes.

10 So in this case, when Ms. Carter chose not
11 to accept the last chance agreement, she appealed to
12 the Step 3, which is an arbitration, which basically
13 means that it is a more formalized hearing with
14 someone who presides over the hearing that is a
15 disinterested party. They are, in effect, a judge,
16 if you will. It's not court, but it's similar.

17 It is a very informal court, how is that?

18 BY MR. MCKEEBY:

19 Q. And was that person that you mentioned an
20 arbitrator? Is that the arbitrator who you just
21 described?

22 A. Yes. Yes. Yes.

23 Q. And did you appear at the arbitration?

24 A. I did.

25 MR. HILL: Objection, limine.

1 BY MR. McKEEBY:

2 Q. What was your --

3 THE COURT: Hold on. I'm going to rule on
4 it.

5 I will overrule that question.

6 You can answer.

7 BY MR. McKEEBY:

8 Q. What was your role in the actual arbitration?

9 MR. HILL: Objection, limine.

10 THE COURT: I think now we are getting to
11 the point of detail where I will sustain the
12 objection.

13 Counsel, any further questions before we
14 take our break?

15 MR. McKEEBY: I think this is a good time
16 for a break.

17 THE COURT: Okay. Let's take our morning
18 break, a little belatedly.

19 Same instructions. You can talk to your
20 fellow jurors and court personnel, just not about
21 this case; don't talk to anyone else, and don't do
22 any research about the case.

23 We will probably take about a 15-minute
24 break, so we will see you in 15 minutes from now.
25 So I guess that is 11:07. See you in 15 minutes,

1 thank you.

2 All rise for the jury.

3 (The jurors exited the courtroom.)

4 THE COURT: Okay. So we are going to take
5 about a 10-minute break, and then we will need to
6 ask some questions outside the jury's hearing in
7 what is called an offer of proof.

8 So there is a topic I have carved out of
9 the jury's hearing, but they are still entitled to
10 ask you questions about it on the record.

11 So we will come back in 10 minutes, we
12 will ask questions outside the jury's hearing, and
13 then we will bring them in when we are done.

14 Any other issues?

15 MR. McKEEBY: No other issues.

16 THE COURT: All right. We will see you in
17 10 minutes.

18 (Recess.)

19 THE COURT SECURITY OFFICER: All rise.

20 THE COURT: Thank you. You can be seated.

21 So we're on the record but outside the
22 jury's presence. So we're going to do an offer of
23 proof on further details on arbitration in the
24 arbitration agreement.

25 Correct, Mr. McKeeby?

1 MR. McKEEBY: Yes.

2 THE COURT: Go for it.

3 MR. McKEEBY: Thank you, your Honor.

4 I forget where we left off.

5 VOIR DIRE EXAMINATION

6 BY MR. McKEEBY:

7 Q. You participated in the arbitration?

8 A. That's correct.

9 Q. You were a witness?

10 A. I was a witness.

11 Q. Were you cross-examined?

12 A. I was.

13 Q. Was that by Ms. Carter's lawyers?

14 A. That is correct.

15 Q. Now, do you recall who the arbitrator was?

16 A. Arbitrator Lemons, L-E-M-O-N-S. I don't
17 remember his first name.

18 Q. How was he selected?

19 A. There is a mechanism between the company and
20 the union to select arbitrators. It is done via a
21 panel where the union submits names of arbitrators
22 they prefer, the company submit names of arbitrators
23 we prefer, and there is a strike method that lands
24 on a seated panel, if you will.

25 Once the panel is seated, it goes in rotation

1 between union picks and company picks.

2 Q. Had you been in proceedings before Arbitrator
3 Lemons before this one?

4 A. I believe I had.

5 Q. Did you view him to be an experienced
6 arbitrator?

7 A. I thought he was extremely experienced.

8 Q. Did Ms. Carter have the opportunity to present
9 witnesses and documents at the arbitration?

10 A. She did.

11 Q. Did she have the opportunity to cross-examine
12 Southwest's witnesses?

13 A. She did.

14 Q. And did Arbitrator Lemons render a written
15 decision after the arbitration?

16 A. He did.

17 Q. And is that --

18 MR. McKEEBY: Pull up 124.

19 BY MR. McKEEBY:

20 Q. Does this appear to be the decision of
21 Arbitrator Lemons?

22 A. It is.

23 MR. McKEEBY: So move to admit. I don't
24 know that --

25 THE COURT: I will admit for the purpose

1 of this offer of proof, but not in front of the jury
2 as evidence that will go back to the deliberation
3 room. Fair enough?

4 MR. HILL: Yes, your Honor.

5 THE COURT: Okay. It is admitted for this
6 hearing.

7 MR. McKEEBY: I'm done. Thank you.

8 THE COURT: Very good.

9 Okay. That concludes the offer of proof.
10 We can bring in the jury.

11 I've got the jury screens muted, so
12 whenever y'all move to a new exhibit that is in
13 evidence --

14 MR. McKEEBY: Okay. You can take that
15 down.

16 (The jurors entered the courtroom.)

17 THE COURT: Okay. You can be seated.

18 And you can continue, Mr. McKeeby.

19 MR. McKEEBY: I can, but I will not. I
20 thank you for your time, Mr. Sims.

21 I will pass the witness.

22 THE COURT: Okay. So Mr. Greenfield, it
23 is your turn.

24

25

1 CROSS-EXAMINATION

2 BY MR. GREENFIELD:

3 Q. Good afternoon, Mr. Sims.

4 A. Good afternoon, sir.

5 Q. My name is Adam Greenfield and I represent the
6 Union in this matter.

7 A. Yes, sir.

8 Q. Okay. I want to talk to you a little bit about
9 representation first.

10 My understanding is that Beth Ross and Becky
11 Parker represented Ms. Carter at the Step 2 hearing,
12 is that correct?

13 A. That is correct, sir.

14 Q. Okay. And can you please describe the quality
15 of representation that you viewed by Ms. Ross and
16 Ms. Parker at that hearing?

17 A. I have known Ms. Ross and Ms. Parker for many
18 years, and they are the utmost professionals, highly
19 capable, highly astute, and highly passionate about
20 their case. I thought she was very well
21 represented.

22 Q. And were they those things you described for
23 Ms. Carter?

24 A. Did they --

25 Q. Did they exhibit those characteristics in their

1 presentations?

2 A. Absolutely. Absolutely. Becky Parker
3 especially was very passionate about ensuring that
4 Ms. Carter was taken care of in terms of their
5 disposition of the case.

6 MR. GREENFIELD: I think we stepped on
7 each other a little bit, and my apologies to
8 Ms. Willis for that.

9 BY MR. GREENFIELD:

10 Q. Let's ask it again so we can have a clear
11 record for the future.

12 The qualities you described in Ms. Parker and
13 Ms. Ross, did they exhibit those in the
14 representation of Ms. Carter?

15 A. I believe they did. I thought they were
16 outstanding and were very compelling in terms of how
17 they came prepared and how they provided
18 representation for her.

19 Q. You talked about the last chance agreement
20 earlier with Mr. McKeeby. Do you remember that?

21 A. I do.

22 Q. And did you discuss that last chance agreement
23 with either Ms. Ross or Ms. Parker at any point?

24 A. I did not.

25 Q. Is there anything that would have -- that could

1 have been represented by Ms. Carter or Ms. Parker or
2 Ms. Ross that would have changed the last chance
3 agreement that you offered to Ms. Carter?

4 A. That I don't know. We never had that
5 conversation.

6 Q. Would you have considered a reduction in the
7 24-month probation letter?

8 A. That's possible. We just never had that
9 conversation.

10 Q. Okay. Could you testify to the jury if
11 there's -- if you would have taken that out
12 completely, if asked?

13 MR. HILL: Objection.

14 THE WITNESS: I don't think I could have
15 taken it out completely.

16 THE COURT: Hold on. There was an
17 objection.

18 MR. HILL: Relevance.

19 THE COURT: Okay. I will overrule and
20 allow the answer to stand.

21 New question.

22 MR. GREENFIELD: You sustained the
23 objection? I'm sorry.

24 THE COURT: I overruled it, but the
25 objection came after the question, so I had to say

1 what I was doing to the question and the answer. I
2 let it stand. So you can ask a new question.

3 MR. GREENFIELD: Yes, your Honor.

4 BY MR. GREENFIELD:

5 Q. So my understanding, based on what you said, is
6 that you don't think you would have removed that
7 stipulation?

8 A. No, sir.

9 Q. Why not?

10 A. Well, Ms. Carter's actions that led to her
11 termination were very egregious, very disturbing,
12 and were very much against the principles of our
13 company. Basically the principles of just treating
14 others with respect.

15 So that 24-month clause would not have been
16 removed because that was the purpose of the last
17 chance agreement, to have something in place to
18 ensure that Ms. Carter knew moving forward that
19 these were the expectations further highlighted to
20 ensure that she was clear on the path she needed to
21 take.

22 Q. And your testimony earlier is that she
23 expressed remorse and that she wouldn't do it again?

24 A. That is correct.

25 Q. Fair to say this is a way to ensure that?

1 A. That is correct. It's, you know, in layman's
2 terms, it's our insurance policy.

3 Q. Okay.

4 At any point during the Step 2 process, did
5 Ms. Carter ever try to convince you that the
6 messages she sent to Ms. Carter were fake or not
7 actually sent by her?

8 A. No, she didn't. That was actually pretty
9 established from the get-go, that she admitted to
10 them.

11 MR. GREENFIELD: Can you pull up
12 Exhibit 120?

13 BY MR. GREENFIELD:

14 Q. Do you recognize this document, Mr. Sims?

15 A. I do.

16 Q. Okay. And if I can turn your attention to the
17 very bottom of the very last paragraph. Do you see
18 that paragraph?

19 A. Yes, sir.

20 Q. Okay. And above you said you were going to put
21 it in the file.

22 A. Yes.

23 Q. What did this communication mean to you?

24 A. Well, what it was, was Ms. Carter sent this
25 email to her union representative asking to forward

1 this to me. And I'm assuming that that was in
2 consideration of her case or to provide additional
3 information.

4 So her union representative, Beth Ross, sent it
5 to me, and then I sent it to labor relations to add
6 to the overall file.

7 Q. What is your impression of what, if any,
8 Ms. Carter was trying to represent to you by
9 presenting this?

10 A. I don't have really an impression other than my
11 thought was she was wanting us to have additional
12 information.

13 Q. Okay. Ms. Carter testified yesterday that you
14 told her that Southwest Airlines should never have
15 gotten involved in this case.

16 Did you ever say that to Ms. Carter?

17 A. Not in those words. What I told her was
18 Southwest Airlines does not like to get involved in
19 disputes between union leaders and the constituents
20 they represent, but in this case, we were forced
21 into it.

22 Q. Okay.

23 MR. GREENFIELD: No more questions. Thank
24 you, sir.

25 THE COURT: Thank you, Mr. Greenfield.

1 Mr. Hill, Mr. Pryor, Mr. Gilliam.

2 MR. HILL: No questions, your Honor.

3 THE COURT: Okay.

4 Any need to ask questions on based on
5 Greenfield's questions, Mr. McKeeby?

6 MR. McKEEBY: No.

7 THE COURT: Any need to reserve him to
8 call him back?

9 MR. HILL: No.

10 THE COURT: Okay.

11 You are excused from your testimony.

12 Thank you for being here.

13 THE WITNESS: Thank you, sir.

14 MR. HILL: Hold on. Maybe. We may need
15 to reserve him. I'm sorry.

16 THE COURT: Okay. So what I will ask you
17 to do is you are excused from the courtroom. They
18 might need to call you back.

19 In light of that, I'm going to ask you not
20 to talk to anyone about the case in the meantime.

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Thank you. Okay.

23 MR. McKEEBY: Does that mean he can leave
24 the courthouse?

25 THE COURT: Sidebar?

1 MR. McKEEBY: Okay.

2 (Thereupon, the following proceedings were
3 had at sidebar:)

4 THE COURT: So the question would be one
5 on timing. I have no problem with him leaving the
6 courthouse unless it looks like we're going to get
7 to the plaintiff's rebuttal case soon. I haven't
8 watched to see -- this is your last witness?

9 MR. McKEEBY: Yes.

10 THE COURT: You are about to rest.

11 So then you are about to go.

12 I know you have called Sims. You're going
13 to call Carter?

14 MR. GREENFIELD: I don't intend to recall
15 Sims. I just intend to call Ms. Carter.

16 THE COURT: Okay. Do you have any guess
17 as to how long you will go with Carter?

18 MR. GREENFIELD: If everything goes to
19 plan, 15 minutes, but probably an hour.

20 THE COURT: So I would say in light of
21 that, can we ask him to stay within 15 minutes of
22 the courthouse? I don't want to tell him he can't
23 leave the courthouse. We will probably need him
24 shortly after lunch is my guess.

25 MR. PRYOR: Your Honor, part of this will

1 depend on when they rest, after they do all of that.

2 By the way, I found a very interesting
3 legal discussion. I'm going to ask the Court for
4 some more time. If I don't get more time, I won't
5 call him back. If I get more time, I will consider
6 calling him back. But we will need more time.

7 THE COURT: I understand your request.

8 So let me ask you this while we are at
9 sidebar. When he rests, are you going to need to
10 make a motion outside the presence of the jury --

11 MR. PRYOR: Yes.

12 THE COURT: -- or you going to wait to
13 make a motion until he rests?

14 MR. PRYOR: I think procedurally, when he
15 rests, we have to -- now, the Court can certainly
16 say, I will hold off until -- it is up to you, but I
17 think we technically have to make our motion at that
18 time, and you can hold it in an abeyance and hear it
19 after the Union. It's totally up to you.

20 THE COURT: Okay. So what I will do is we
21 need to go back on the record for you to rest,
22 right, you have no more witnesses, and then we will
23 kick the jury out again for you to make your motion.

24 And I will hold it abeyance until after I
25 hear the Union, just keep them out as briefly as

1 possible.

2 I can't stop you from making your motion.

3 MR. PRYOR: I'm not trying to jerk this
4 gentleman's chains. If you can give me two more
5 hours, I would love to spend some time with him. If
6 you can only give me one more hour, 45 minutes, I'm
7 probably not going to call him.

8 THE COURT: Okay. Let's go back and do
9 our thing.

10 MR. GREENFIELD: Your Honor, can I make a
11 request to Mr. Frye that after he rests and before
12 we start, I can just get a shot clock of where we
13 stand with everybody, just so I know going in if I
14 may need to request more time.

15 THE COURT: I will ask them. It's
16 multiple timekeepers and they calibrate against each
17 other. So I will ask while we're doing your motion.

18 MR. GREENFIELD: I just need a rough one.

19 MR. PRYOR: I want to make sure I
20 understand. When he rests, I just stand up and say,
21 We have an issue outside the presence of the jury.

22 THE COURT: Sure.

23 (Thereupon, the sidebar was concluded and
24 the following proceedings were held in open
25 court:)

1 THE COURT: Okay. So with that, now I
2 need to ask Mr. McKeeby, do you have any other
3 witnesses for Southwest's case?

4 MR. McKEEBY: No, your Honor. Southwest
5 rests.

6 THE COURT: Okay. So do you have a
7 motion?

8 MR. PRYOR: Your Honor, at this time we
9 have a matter to handle outside the presence of the
10 jury.

11 THE COURT: Got it.

12 So any time anyone says the word "rest,"
13 then I've got to kick y'all out again, but we will
14 try to keep it as short as possible.

15 So don't talk to anyone about the case,
16 just talk to your fellow jurors and court personnel,
17 not about the case. Don't do any research.

18 We will see you as soon as we can.

19 All rise.

20 (The jurors exited the courtroom.)

21 THE COURT: Okay. Y'all can be seated.

22 As soon as that door is closed, you can
23 go, Mr. Pryor -- Mr. Gilliam.

24 MR. PRYOR: My lawyer.

25 MR. GILLIAM: At this time, Plaintiff

1 Carter would move for a directed verdict on all
2 claims against Southwest Airlines.

3 THE COURT: All right. You can elaborate
4 as much or as little as you want to. It's entirely
5 up to you.

6 MR. GILLIAM: Well, so let's start first
7 with the RLA retaliation claims.

8 There is no question that -- let me move
9 up to the podium here for the sake of clarity.

10 There is absolutely no question that
11 Ms. Carter was fired and that she engaged in
12 RLA-protected activity. All of her Facebook videos
13 and messages to President Stone are nothing but RLA.
14 Well, they are RLA-protected activity. They do
15 happen to be protected by Title VII, we will get to
16 that in a minute.

17 But they were all activity opposing what
18 the Union was doing at the Women's March. They were
19 objecting to how the Union was spending money.

20 And the -- both the videos and the
21 pictures demonstrated that, demonstrated
22 Ms. Carter's opposition. They were part of her
23 protected activity.

24 And then as to the next factor under
25 Rocello, her RLA-protected activities were a

1 motivating factor for Southwest's decision to
2 terminate her employment.

3 There is -- there is no dispute or
4 question regarding that either. I think Mr. --
5 Mr. Schneider has testified that, yes, they fired
6 her for her Facebook videos and messages to Audrey
7 Stone. And that's all RLA-protected activity.

8 We had discussed Write-Line at another
9 point. I know that's probably still an outstanding
10 issue, but I would say this. While Southwest may be
11 allowed a legitimate non-discriminatory reason as an
12 affirmative defense, it doesn't have one. Its only
13 defense is a discriminatory reason, that is, the
14 other discriminatory reasons that would come in
15 would be her Title VII rights and her religious
16 expression.

17 So shifting to that, the first RLA -- I'm
18 sorry, the first Title VII religious discrimination
19 claim against Southwest. So Southwest fired
20 Ms. Carter -- that's the conflict with the social
21 media policies -- because of her sincerely-held
22 religious beliefs. Ms. Carter has testified to her
23 religious beliefs.

24 And even from Mr. Sims to Mr. Schneider,
25 they all recognized that, yes, her religious belief

1 articulated at the fact-finding meeting was that she
2 wanted to share her message that abortion is the
3 taking of life, contrary to the will of God.

4 Southwest fired her for that.

5 And moving on to the failure to
6 accommodate claim, Southwest was perfectly aware at
7 the fact-finding meeting of Ms. Carter's need for an
8 accommodation. Mr. Schneider had received training
9 from employee relations to recognize any sort of
10 protected categories including religion, but he --
11 he didn't do anything about it.

12 Under the acting policy, a leader who is
13 aware of any employee's need for accommodation must
14 report to the ACT team. And that didn't happen.

15 There is no undue hardship question here
16 either because Southwest can't show, and hasn't
17 shown, that there was no possible accommodation that
18 they could make, so they would have had to terminate
19 Ms. Carter's employment.

20 No. It is clear that what they could have
21 done, they could have asked Ms. Carter to remove the
22 nexus photos to Southwest, and that would have
23 resolved the problem for her Facebook posts on her
24 website.

25 She could have posted a disclaimer. None

1 of those would have imposed more than a di minimis
2 burden on the company. They could have done that
3 easily and accommodated Ms. Carter.

4 But instead they fired her, and firing an
5 employee is synonymous with failure to accommodate.

6 So I think I have covered all of the
7 elements. If you have any questions, I'm happy to
8 answer them.

9 THE COURT: Thank you. I don't have any
10 questions, Mr. Gilliam.

11 I'm going to save a ruling for this until
12 after the Union rests and you've made a motion
13 regarding the Union in the interest of saving the
14 jury's time. But I do need to, out of fairness, see
15 if Mr. McKeeby or Mr. Morris have a response to
16 this, briefly.

17 MR. McKEEBY: Okay. Brief response.

18 I think that the entirety of the argument
19 is premised under -- or on the notion that all of
20 the posts were, per se, and completely protected
21 under the RLA, at least as to that claim, as the
22 Court is well aware, we object strongly to that
23 notion. The posts are subject to multiple
24 interpretations which the jury should be allowed to
25 assess in terms of whether or not these were --

1 these videos were an expression of religious belief
2 or union activity or just personal animosity toward
3 Stone, among possible interpretations.

4 Moreover, the lack of evidence of
5 motivation in this case would be a reason to deny
6 the directed verdict.

7 As to the accommodation claim, there was
8 no reason for Southwest to be aware that any
9 conflict existed between Ms. Carter's religious
10 beliefs or practices and the application of its
11 policy.

12 She never requested an accommodation and
13 it wasn't apparent to Mr. Schneider or anyone else
14 that this was a situation where Southwest could or
15 should have simply overlooked its policies and the
16 obligations under those policies to protect its
17 employees in the context of conduct such as that
18 engaged in by Ms. Carter.

19 Finally, we believe there is more than
20 sufficient evidence of undue hardship, particularly
21 with respect to Mr. Schneider's testimony of the
22 impact on employee morale and employee relations in
23 general should employees like Ms. Carter be allowed
24 to disseminate posts like this to others in the
25 workforce.

1 THE COURT: Understood. Okay. Thank you.

2 So I will save my ruling on this until
3 after we get the motion on the Union when the Union
4 rests.

5 So in light of that, anything else before
6 we call back in the jury and we hand the baton to
7 you, Mr. Greenfield?

8 MR. GREENFIELD: No, your Honor.

9 THE COURT: Let's bring them back in.

10 And Mr. Greenfield, you are going to call
11 who first --

12 MR. GREENFIELD: Charlene Carter.

13 THE COURT: Ms. Carter, can you go ahead
14 and come up to the witness box? They are going to
15 call you as the first witness during their case. So
16 while the jury is getting ready, you can come on up.

17 (The jurors entered the courtroom.)

18 THE COURT: Okay. You can be seated.

19 And so now that Southwest has rested, it's
20 your turn to present the Union's case,
21 Mr. Greenfield, and you have called as your first
22 witness --

23 MR. GREENFIELD: Charlene Carter.

24 THE COURT: Ms. Carter, if you could stand
25 back up.

1 Mr. Frye, can you administer the oath to
2 Ms. Carter once more?

3 (CHARLENE CARTER was duly sworn by the
4 Clerk.)

5 THE COURT: Y'all know the instructions,
6 so go for it.

7 DIRECT EXAMINATION

8 BY MR. GREENFIELD:

9 Q. Good afternoon, Ms. Carter.

10 A. Hello.

11 Q. Do you recall, when we spoke previously, that
12 you and I and the jury were attempting to get on the
13 same page as far as what you felt the Union did
14 wrong to you. Is that fair?

15 A. Yes.

16 Q. Okay. Today I would like to start with asking
17 you if you were in the courtroom during my opening
18 statement?

19 A. Yes.

20 Q. And did you hear me say that I felt this case
21 was about you being able to say whatever you wanted
22 whenever you wanted and however you wanted to in the
23 workplace?

24 Do you remember that statement?

25 A. I remember that statement.

1 Q. And do you agree with that?

2 A. I agree with the being the union president, I
3 can speak to my union in any way that I see fit. We
4 pay them to represent us. And so when it comes to
5 my union, yes.

6 Q. Okay. And we will explore that a little bit
7 more.

8 But just to take a step back, in 2013, you
9 objected to being a union member, correct?

10 A. That is correct.

11 Q. And as kind of in line with what you just
12 testified, even though you objected to being in the
13 union, you still wanted a say in how the union was
14 governed and how they spent their funds, correct?

15 A. That is correct, because I still paid dues.

16 Q. And from 2013 to 2017, you were involved with
17 what you felt was activism against union corruption
18 at 556, is that fair?

19 A. Yes.

20 Q. And you talked about it on Facebook?

21 A. Yes.

22 Q. And you threatened to decertify the union?

23 A. I said the word "decertify." I think we need
24 to get rid of TWU, yes, I do. There has been too
25 many problems. They don't work for us.

1 Q. So fair to say you threatened to decertify the
2 union?

3 A. I didn't threaten.

4 Q. Oh. Okay.

5 A. I said the word "decertify," and that means
6 replacing TWU. Yes, I have called for that for a
7 long time.

8 Q. Exactly. For several years, yes?

9 A. From the time that I started seeing what they
10 do to their own members, yes.

11 Q. And you supported a recall petition?

12 A. I voiced my support for that recall position.

13 Q. You supported it?

14 A. I supported the recall, yes. Didn't sign it,
15 but I supported it.

16 Q. Understood.

17 And you opposed the first tentative contract
18 agreement that Audrey Stone's administration had
19 negotiated, correct?

20 A. Didn't get to vote, but yes, I opposed it.

21 Q. And you sent Instant Messages to Audrey Stone
22 as well, correct?

23 A. I sent Instant Messages to my president of TWU
24 556, yes, I did.

25 Q. And through all of that, from 2013 to the

1 beginning of 2017, you maintained a clean
2 disciplinary file, isn't that right?

3 A. That is correct.

4 Q. Not a single complaint from another flight
5 attendant or Southwest employee, right?

6 A. My file?

7 Q. Yes, ma'am.

8 A. As far as I know, yes. I never got called in.

9 Q. Okay.

10 So let's talk about life after February of
11 2017, okay?

12 A. Okay.

13 Q. That's when you started sending a very specific
14 type of message to a very specific employee,
15 correct?

16 A. I don't know what you are talking about.

17 Q. Okay. Well, I'm talking about the graphic
18 abortion videos you sent to Ms. Stone.

19 A. The baby abortion videos, yes, to my union
20 president, after they went to the union -- or the DC
21 march with Planned Parenthood, yes, I did.

22 Q. And these are not my words, you described the
23 video as graphic yourself, isn't that right?

24 A. That was on my personal Facebook page. That
25 was not to her.

1 Q. You don't agree that it's a graphic video?

2 A. It is a depiction of what happens to a precious
3 little baby after it's been aborted.

4 Q. And do you find that to be graphic?

5 A. I find that to be graphic on my personal
6 Facebook page. For anybody that sees the word
7 "graphic," they can scroll through it or watch the
8 video.

9 But when Ms. Stone took those women to that
10 march, she was subjected to the very same things as
11 what I sent her from pro life groups there at the
12 march.

13 So ask your question again.

14 MR. GREENFIELD: I'd make an objection to
15 speculation and move to strike Ms. Carter's response
16 about what Ms. Stone would have viewed at the march.

17 THE COURT: I will sustain that.

18 I will strike that one sentence.

19 Jury, please disregard that last sentence.

20 BY MR. GREENFIELD:

21 Q. Ms. Carter, you don't know what Ms. Stone saw
22 at the march, do you?

23 A. Not specifically, but I will also tell you,
24 too, she made me feel sick, as far as I'm concerned,
25 taking those women and wearing those pussy hats

1 within the march.

2 MR. GREENFIELD: Objection, your Honor,
3 non-responsive. Move to strike the testimony.

4 THE COURT: I will overrule that.

5 BY MR. GREENFIELD:

6 Q. This was the first time you had ever sent a
7 coworker a video of an aborted baby, right?

8 A. I sent my union president, this was the only
9 time, and it was in reference to what she did by
10 taking those women to that march, yes.

11 Q. Well, you don't dispute that Ms. Stone was a
12 coworker, correct?

13 A. She was our union president first and foremost
14 at that particular time. Was she a flight attendant
15 prior to that and flew regular trips, as the rest of
16 you did? Yes.

17 Q. Are you telling the jury today that you don't
18 believe Ms. Stone was a coworker?

19 A. She was my union president at that time. She
20 was a coworker in the sense that she still worked at
21 Southwest Airlines, but she was using -- she was in
22 the capacity of the union president.

23 Q. But she was a coworker, correct?

24 MR. PRYOR: Object, asked and answered.
25 She just answered.

1 THE COURT: Hold on. Speaking objection.

2 I will sustain that.

3 New question.

4 MR. GREENFIELD: Yes, your Honor.

5 BY MR. GREENFIELD:

6 Q. And after you sent those videos to Ms. Stone,
7 like clockwork, and also for the first time, you got
8 a call from the company to answer a complaint
9 against you, correct?

10 A. Yes, I did.

11 Q. Okay. And you knew exactly what it was for,
12 didn't you?

13 A. When they referenced on the call -- and this is
14 the first call I got was from Meggan Jones -- she
15 said it had to do with a post.

16 The second message I received was from Ed
17 Schneider, and they said that it had to do with a
18 post that was sent to a -- what they called just
19 another flight attendant coworker. They didn't
20 reference that it was my union president.

21 But I never sent anything else to anybody else
22 but my union president.

23 Q. That's right, Ms. Carter. You knew exactly
24 what it was about when they called, didn't you?

25 A. When they made reference to it, yes, I did. I

1 mean --

2 Q. But they didn't reference Ms. Stone in the
3 call, did they, that initial call?

4 A. When they said that it was a post that I had
5 sent, I knew -- I didn't send any other posts to
6 anybody else. So I knew. And she's the only one
7 that I communicated with. My president.

8 Q. Thank you. That's my point.

9 And there was discussion earlier by Ms. Jones
10 and Mr. Sims about remorse.

11 Are you -- let me just ask you point blank, are
12 you remorseful or sorry for the manner in which you
13 communicated to Mr. Stone?

14 A. Not in the manner that I communicated because I
15 could have, if I was a member, I could have taken
16 that to a union membership meeting, taken the same
17 exact post, said the same exact things in that
18 membership meeting, and it would have been
19 protected.

20 Any communication further should have been
21 protected as well because it always had been.

22 Q. And did you agree with Ms. Jones's comment that
23 you showed no remorse for your actions?

24 MR. PRYOR: Object, just asked and
25 answered.

1 MR. GREENFIELD: This is a different
2 questions. This is a different question, your
3 Honor.

4 THE COURT: Yes, it is different. You can
5 answer it.

6 THE WITNESS: I showed no remorse in the
7 fact that they asked me in the manner that I sent
8 it. No, I don't -- I'm not remorseful for objecting
9 to how my union was representing me and many other
10 coworkers at a march that I disagreed with.

11 BY MR. GREENFIELD:

12 Q. Okay. And my question is a little bit
13 different, so let's be clear for the jury.

14 I'm not asking you about whether you are
15 remorseful about what you were opposing. I'm asking
16 if you were sorry for the way you approached the
17 situation.

18 MR. PRYOR: I object. Maybe it's just me,
19 it sounds like the third time. The fact he can use
20 one --

21 THE COURT: Hold on. That's a speaking
22 objection.

23 MR. PRYOR: Sorry.

24 Object, asked and answered.

25 THE COURT: I will sustain that.

1 BY MR. GREENFIELD:

2 Q. Mr. Sims up here, when he was up here, he
3 expressed to the jury that he felt you were sorry
4 for the way that you communicated to Ms. Stone.

5 Did you hear that testimony?

6 MR. PRYOR: Object, mischaracterizes his
7 testimony.

8 THE COURT: I will sustain that.

9 You can reask it in a different way.

10 BY MR. GREENFIELD:

11 Q. Do you believe you expressed remorse to
12 Mr. Sims over the way you communicated with Audrey
13 Stone?

14 A. The remorse that I had that I expressed was
15 that if it hurt her as a person, that I was sorry
16 for that. But I still have that ability to
17 communicate; if she decides to take other people,
18 that we pay for, to a march like that, I'm not sorry
19 for that.

20 I'm just going to tell you right now, we've
21 always had open communication without the company
22 being involved in union business.

23 So what I probably would have done was opted
24 back in and taken that complaint to a union meeting
25 so that the company could not and would not, because

1 they couldn't have used it under the social media
2 policy that they claim that they used it for.

3 And we were being targeted by the union and
4 their representatives regarding social media.

5 MR. GREENFIELD: Objection, move to
6 strike, non-responsive. Move to strike everything
7 that did not have to do with my question involving
8 remorse.

9 THE COURT: I will sustain that, jury.
10 Please disregard any portion of the answer that did
11 not relate to remorse.

12 BY MR. GREENFIELD:

13 Q. Ms. Carter, I understand that. I think the
14 jury understands those last points you were trying
15 to make. But I would like to just stick to the
16 questions I'm asking, okay?

17 A. Uh-huh.

18 Q. In fact, in an earlier proceeding to get your
19 job back, you actually admitted that sending the
20 post to Ms. Stone was a mistake, isn't that correct?

21 A. The mistake that I made was not going into the
22 union office. But still the communication that was
23 rendered through the Facebook messages was the only
24 way that I was going to be able to make -- or
25 through email -- was the only way that I was going

1 to be able to make my statement and my dislike
2 heard.

3 Q. Did you previously offer this same explanation
4 for what you described as a mistake?

5 A. I don't understand that question.

6 Q. You testified, just now, that it was a mistake,
7 but not that type of mistake, not the type of
8 mistake I'm talking about, correct?

9 A. The mistake would be the fact that they were
10 using social media to target us, and that's exactly
11 what happened.

12 If I were to have done it again, I would have
13 gone into her office at the 556 office building and
14 spoken with her, and the company couldn't have used
15 the social media part of it to fire me.

16 Q. Okay.

17 A. It's protected speech between me and my union.

18 Q. I understand that you believe it's protected
19 speech, Ms. Carter.

20 I'm talking about remorse and mistakes and
21 apologies. That's what we are talking about.
22 That's what I'm talking about right now. Okay?

23 A. Correct.

24 Q. All right. And previously, at that earlier
25 proceeding to get your job back, you did, in fact,

1 say that you were sorry for what you did, isn't that
2 right?

3 MR. PRYOR: Object, asked and answered.
4 She just explained what she meant.

5 THE COURT: Hold on. That's a speaking
6 objection.

7 MR. GREENFIELD: Talking about a different
8 proceeding, your Honor.

9 THE COURT: I will allow her to answer if
10 you clarify which proceeding.

11 BY MR. GREENFIELD:

12 Q. At the arbitration that was discussed earlier.

13 MR. PRYOR: Object to the arbitration.
14 Object, continuing limine issue.

15 THE COURT: I will grant you a running
16 objection, and I will see what the question is.

17 BY MR. GREENFIELD:

18 Q. During that hearing, isn't it true that you
19 testified --

20 MR. PRYOR: Object, your Honor. He's now
21 using testimony --

22 THE COURT: We don't do speaking
23 objections.

24 MR. GREENFIELD: If we can approach, your
25 Honor.

1 MR. PRYOR: I have to approach.

2 (Thereupon, the following proceedings were
3 had at sidebar:)

4 THE COURT: No speaking objections, right?
5 If we do speaking objections and you lose them, I
6 count that time against you.

7 MR. PRYOR: Okay. And I can't afford it.

8 THE COURT: I know. So just speak in
9 code, right? If it's the arbitration --

10 MR. PRYOR: I quickly said limine.

11 THE COURT: -- details in the arbitration.

12 So these are questions of what she said at
13 the arbitration hearing.

14 MR. GREENFIELD: I intend to impeach her.
15 Her testimony is that she's not -- she's admitting
16 that -- she is testifying that she didn't say that
17 the posts were a mistake and that she's not sorry
18 for what she's done.

19 MR. PRYOR: That's not what she said.

20 MR. GREENFIELD: Excuse me.

21 That is in direct contradiction to what
22 she testified at the arbitration hearing, and I
23 intend to impeach her on it.

24 THE COURT: You can't bring up the
25 arbitration hearing. It's too detailed. I limined

1 out the arbitration hearing, details of the
2 arbitration hearing.

3 MR. GREENFIELD: Okay. But this --
4 details of the arbitration. This is about her
5 specific testimony.

6 This is for a matter of impeachment. I'm
7 not asking about any specifics other than for
8 impeachment, and I'm absolutely allowed to impeach
9 her on her prior sworn testimony.

10 MR. PRYOR: Then do it properly.

11 First of all, I don't think that the value
12 of this -- she's testified what her mistake was,
13 over and over. Her mistake was that she let them
14 take advantage of social media policy, not that what
15 she did was wrong.

16 MR. GREENFIELD: And that's the
17 impeachment because --

18 MR. PRYOR: If this Court thinks that
19 getting into the arbitration at that level is
20 important enough on that issue, we disagree. But if
21 so, he's going to have to lay the predicate. He's
22 going to have to --

23 THE COURT: So I'm with you on the second
24 point. I think you can tread carefully without
25 getting into what was involved in the arbitration

1 and what the arbitration decision was, but you've
2 got to do it properly.

3 MR. GREENFIELD: I intend to impeach her
4 with her prior testimony right now.

5 MR. PRYOR: But he has to show her the
6 testimony and ask her if it's inconsistent. He's
7 got to do it just like he would a deposition. You
8 don't just start reading it.

9 THE COURT: That's correct. At this
10 point, I think she has to see it, right?

11 MR. PRYOR: And they have to establish the
12 transcript --

13 THE COURT: There's one question left. Is
14 that consistent with your prior statement in
15 arbitration? Then you have to show her. That's the
16 last question you can ask before showing her.

17 MR. PRYOR: I don't think he has to use
18 the word "arbitration," but I understand.

19 (Thereupon, the sidebar was concluded and
20 the following proceedings were held in open
21 court:)

22 THE COURT: Okay. So you can ask the
23 question we discussed at sidebar, Mr. Greenfield.

24 MR. PRYOR: Your Honor, time on that?

25 THE COURT: Keep going. Ask the question.

1 BY MR. GREENFIELD:

2 Q. Ms. Carter, the explanation you are giving
3 about your contrition about whether you made a
4 mistake or whether you were sorry, do you believe
5 that to be consistent with prior testimony you gave
6 at the arbitration hearing?

7 MR. PRYOR: Object. He just misstated her
8 testimony, not only at the arbitration, but what she
9 just said.

10 THE COURT: I will sustain that.

11 You can rephrase it.

12 BY MR. GREENFIELD:

13 Q. It's your testimony that it wasn't a mistake,
14 correct?

15 MR. PRYOR: Object, asked and answered.

16 THE COURT: I will allow this.

17 THE WITNESS: In what --

18 BY MR. GREENFIELD:

19 Q. Sending the message to Ms. Stone, it's your
20 testimony today that it was not a mistake?

21 MR. PRYOR: Object, mischaracterizes
22 testimony. The question has been asked and answered
23 three times.

24 THE COURT: No, you put him here. So yes,
25 you can be here. So you can get an answer to your

1 question.

2 THE WITNESS: That it was a mistake to
3 send it to her?

4 BY MR. GREENFIELD:

5 Q. Yes, ma'am.

6 A. I just said that. The mistake was to use it
7 under the form of a social media portion. I should
8 have taken it to her union office and presented it
9 to her, and then the company would have never been
10 able to get involved in the union business.

11 Q. And do you --

12 A. They use social media.

13 Q. I'm sorry, I don't mean to cut you off.

14 Do you believe that is consistent with your
15 prior testimony at the arbitration proceeding?

16 A. Honestly, I do not remember all of what I said.
17 That's been five years ago. I would have to look at
18 it in context.

19 I will say this. I did say I was sorry if it
20 affected her the way that she is claiming that it
21 affected her. But again, they subjected us to them
22 taking our money and representing us in a march that
23 we did not agree with.

24 Q. So it's your testimony that you are sorry for
25 what -- if it bothered her, but you are not sorry

1 for what you did, is that fair?

2 A. In the context of what I was -- who I was
3 sending it to, my union president, I would not be
4 here today if they would not have gone to that
5 march.

6 MR. GREENFIELD: Your Honor, I intend to
7 approach the witness for purpose of impeachment.

8 THE COURT: You may.

9 MR. PRYOR: Your Honor, we would like page
10 and line and a copy.

11 THE COURT: You can get it.

12 MR. GREENFIELD: Carter arbitration
13 transcript, Volume 2, lines 8 through 23.

14 THE COURT: I have it.

15 MR. PRYOR: I have to locate it.

16 MR. GREENFIELD: I would be happy to show
17 it to you right here.

18 MR. PRYOR: Your Honor, we object to the
19 use of the arbitration transcript. It's not
20 inconsistent.

21 THE COURT: I understand.

22 I will let you put it in front of the
23 witness.

24 BY MR. GREENFIELD:

25 Q. Ms. Carter, before I show you this document, do

1 you remember testifying --

2 THE COURT: Hold on. We need to get you
3 to a microphone.

4 MR. GREENFIELD: I apologize for the back
5 and forth.

6 BY MR. GREENFIELD:

7 Q. Ms. Carter, do you remember testifying at an
8 arbitration proceeding to get your job back?

9 A. Yes, I do.

10 Q. And do you remember taking an oath to swear to
11 tell the truth, the whole truth, and nothing but the
12 truth for that?

13 A. Yes, I do.

14 Q. Can you please read silently as I read aloud.
15 Can we share a microphone?

16 THE COURT: Hold on.

17 MR. PRYOR: Is he having her read it
18 silently or out loud?

19 THE COURT: He's asking for himself to
20 read it out loud while she reads it silently.

21 MR. PRYOR: No. I object. It's improper
22 use. He hadn't established an inconsistency, and
23 we've pointed it out to the Court.

24 THE COURT: I will sustain that.

25

1 BY MR. GREENFIELD:

2 Q. If you can just read from here to here.

3 A. I'm still not clear, what am I supposed to
4 read?

5 Q. This part.

6 A. This right here?

7 Q. Yes, ma'am.

8 A. Okay.

9 Q. Scroll down?

10 A. Wait. Wait.

11 Q. I apologize.

12 A. I'm sorry. Because I have to digest this. I'm
13 sorry.

14 Q. That's all right.

15 A. I'm not sure, who is -- this is a question,
16 correct?

17 Q. Yes, ma'am.

18 A. Okay. I don't know how to read from this
19 computer. Sorry.

20 Q. Where can I help?

21 A. No, I wanted to go back. It's the question.

22 Q. Yes, ma'am.

23 A. Okay.

24 Okay.

25 Q. And can you read and do you see anything else

1 underneath there about your testimony?

2 This is where the question is.

3 A. Yeah, that's where I just read to.

4 I answered it the same way.

5 Q. Ms. Carter, the document I showed you, does it
6 refresh your recollection as to what your testimony
7 was at the arbitration proceedings?

8 A. Yes. And it's exactly what I just told you.

9 Q. So your testimony today -- let me ask a
10 separate question -- the caveats you've provided
11 today now about why it was a mistake and what you
12 were actually sorry about, did you offer those
13 opinions at the arbitration?

14 MR. PRYOR: Object, misuse of a
15 transcript. She's answered his question. Now
16 he's --

17 THE COURT: Hold on. That's a speaking
18 objection.

19 MR. PRYOR: Sorry.

20 THE COURT: I'm overruling it.

21 MR. PRYOR: Object to the form of the
22 question.

23 THE COURT: You can answer.

24 THE WITNESS: Okay. Ask that again,
25 because I just answered that same question in the

1 same manner.

2 BY MR. GREENFIELD:

3 Q. Well, see, that's why we are talking about it,
4 Ms. Carter.

5 Based on what I just showed you, does it
6 refresh your recollection that you did not offer the
7 same caveats about it being a mistake -- about why
8 it was a mistake, excuse me -- or what you were
9 sorry to? You didn't offer that to the arbitrator,
10 did you?

11 A. It's the same stuff, though. It would have
12 been it's a union matter. And the same -- I may not
13 have said those exact words, but that's exactly what
14 it meant.

15 It meant that I would have not done it in the
16 manner in which I did. I didn't say because of the
17 social media stuff. But I would have -- I would
18 have gone into her office.

19 Did I say the exact same words? No. But that
20 is the same manner in which it's -- it's being
21 portrayed.

22 Q. Yes, ma'am. And Ms. Carter, I'm not talking
23 about the exact same words, I'm talking about any
24 words.

25 You are offering testimony to the jury today as

1 to what you think you actually made a mistake about
2 and what you actually were sorry about. But at no
3 point did you ever express any of that to the
4 arbitrator, isn't that correct?

5 A. In that -- in that testimony --

6 Q. Yes, ma'am.

7 A. -- I did not use the exact same words, you are
8 correct. I didn't.

9 Q. And not the exact same words, you didn't offer
10 any of the explanation that we are hearing today,
11 isn't that correct?

12 A. As in saying that I would taken it to her union
13 office? It's the same type of answer.

14 I'm sorry for the way that I did it because
15 they used it -- no, I didn't say because they used
16 it under the social media policy. I made a mistake
17 by sending it through social media instead of taking
18 it to her office.

19 No, I didn't say those exact words, but that is
20 exactly what was meant.

21 Q. So you agree that you made a mistake in the way
22 you sent it to Ms. Stone, isn't that correct?

23 MR. PRYOR: Object, asked and answered.

24 MR. GREENFIELD: And she's --

25

1 BY MR. GREENFIELD:

2 Q. You're testifying right now --

3 MR. PRYOR: -- leading after her
4 explanation.

5 THE COURT: No speaking objections.

6 I will sustain that.

7 BY MR. GREENFIELD:

8 Q. You are testifying right now before the jury
9 that what you should have done is you should have
10 gone to the union office and talked to Ms. Stone,
11 isn't that right? That's the mistake you made?

12 A. The mistake I made was sending it through the
13 social media because they were using the social
14 media -- I would have never been called in if we
15 weren't being targeted through social media. I
16 would have gone through to her office.

17 Q. You are sorry for that, right? The manner in
18 which you sent it?

19 MR. PRYOR: Object, asked and answered.

20 THE WITNESS: Oh, I'm not sorry --

21 THE COURT: Hold on.

22 Sustained.

23 MR. GREENFIELD: She just said she's not
24 sorry. So if that's the point, I would like to
25 approach the witness for purposes of impeachment.

1 MR. PRYOR: It's a point she's explained
2 what she's sorry for and what she's not --

3 THE COURT: I will allow her to answer
4 this question in light of that answer.

5 BY MR. GREENFIELD:

6 Q. Are you sorry for the manner in which you sent
7 it to Ms. Stone or not, Ms. Carter? That's what I
8 want the jury to understand.

9 MR. PRYOR: Object to the form of
10 question. It's him telling her what the jury
11 understands.

12 THE COURT: I will sustain that.

13 Reask.

14 MR. PRYOR: Wow.

15 BY MR. GREENFIELD:

16 Q. Ms. Carter, are you sorry for the manner in
17 which you sent Audrey Stone the messages?

18 A. I would have to reread what you just said,
19 because now I'm so confused on everything. I'm
20 sorry.

21 Q. This is a very simple question. You don't have
22 to read anything.

23 I'm asking you right now, are you sorry for the
24 manner in which you sent the messages to Ms. Stone?

25 MR. PRYOR: Object, asked and answered

1 repeatedly.

2 THE COURT: Overruled.

3 You can answer.

4 THE WITNESS: Can I see that document
5 again?

6 BY MR. GREENFIELD:

7 Q. Ma'am, can you not answer my question without
8 reading things?

9 A. Am I sorry for sending it in the manner -- you
10 are asking me what I said five years ago.

11 Q. Ma'am, this is a very simple question.
12 Are you or are you not sorry for the manner in
13 which you sent the messages to Ms. Stone?

14 A. Yes, because it got me here.

15 Q. So you are only sorry because you are here
16 because of it, that is it? Not actually sending it
17 to her, just the result?

18 A. I didn't know that I couldn't communicate to my
19 union president.

20 MR. GREENFIELD: Objection, your Honor.
21 Move to strike, non-responsive.

22 THE WITNESS: I'm sorry for the fact it
23 hurt her if it hurt her in any manner. I have
24 already said that.

25

1 BY MR. GREENFIELD:

2 Q. And I'm not asking you about that, Ms. Carter.

3 A. And yes, sitting here today, I am sorry for the
4 manner that I sent it. Yes.

5 Q. Thank you.

6 I would like to talk now about what you believe
7 should be the rules when it comes to other
8 employees' rights at the workplace. Okay?

9 A. Okay.

10 Q. You believe that a union member should never
11 turn in another union member at Southwest under any
12 circumstances, correct?

13 MR. PRYOR: Object, asked and answered
14 previously.

15 THE COURT: I'll overrule that.

16 BY MR. GREENFIELD:

17 Q. Is that correct?

18 A. Repeat that.

19 Q. You believe that a union member should never
20 turn in another union member to Southwest Airlines
21 under any circumstance, correct?

22 A. An executive board member? Yes, I don't think
23 that they should ever turn them in to Southwest
24 Airlines.

25 Q. I'm just asking about any member.

1 A. Any member.

2 Q. Yes, ma'am. We will get to executive board
3 members. I'm just talking about --

4 A. Any member.

5 Q. Yes, ma'am.

6 A. It depends upon the context.

7 Q. Okay. Thank you.

8 So now I want to talk to you about what you
9 believe should be the rules when it comes to you and
10 your voice, okay?

11 A. Uh-huh.

12 MR. PRYOR: I'm sorry. Union what?

13 BY MR. GREENFIELD:

14 Q. In the workplace --

15 THE COURT: Counsel couldn't hear that.
16 Can you reask that one question?

17 MR. GREENFIELD: Yes. It was a signpost
18 to just talk about a transition about what we are
19 going to be speaking about, and I want to talk to
20 Ms. Carter about the rules when it comes to her and
21 her voice.

22 MR. PRYOR: Her and her voice. Okay.

23 BY MR. GREENFIELD:

24 Q. In the workplace, you believe that you should
25 be able to say whatever you want, however you want,

1 if it is in support of your Christian beliefs,
2 right?

3 MR. PRYOR: Asked and answered. Very
4 beginning.

5 MR. GREENFIELD: It's a different --

6 THE COURT: Yeah, it's a different ending.
7 I will allow you to answer.

8 THE WITNESS: That I can say anything and
9 anything? Repeat that.

10 BY MR. GREENFIELD:

11 Q. You believe that you should be able to say
12 whatever you want, however you want, if it's in
13 support of your Christian beliefs, isn't that true?

14 A. Yes, I should be able to -- to voice my
15 Christian beliefs.

16 Q. With no constraints, no roof on the vulgarity?

17 A. First of all --

18 Q. No ceiling on the trauma that it could induce?

19 A. -- I never, ever sent these to just a member.
20 This was to my union president.

21 MR. GREENFIELD: Objection, your Honor,
22 non-responsive --

23 THE WITNESS: I would never send something
24 like that. So here you go.

25 No, I would never send those types of

1 things to just a regular member. No.

2 BY MR. GREENFIELD:

3 Q. I understand. And we are talking --

4 So you believe it changes now, based on whether
5 it's a member or an executive board member?

6 A. The only reason that it was sent was because it
7 is a board member who actually took our money and
8 spent it. If they wouldn't have spent the money, I
9 wouldn't have had a gripe, a dissenting opinion
10 about it and a view on it. I don't care what they
11 do. I do if they spend my money and represent me.

12 Q. Yes, ma'am. And I'm not talking to you about
13 the complaint right now. Okay?

14 Can we be on the same page with that?

15 A. Yes.

16 Q. I'm asking you about your general beliefs about
17 what you can and can't do, okay?

18 A. Okay.

19 Q. All right.

20 In the workplace, because I don't think we have
21 an answer to this question, I understand an
22 objection is probably going to be made about that,
23 but you believe that you should be able to say
24 whatever you want, however you want, if it is in
25 support of your Christian beliefs. That's correct,

1 right?

2 MR. PRYOR: Object, asked and answered.

3 THE COURT: I will sustain that.

4 BY MR. GREENFIELD:

5 Q. There is no roof on the vulgarity of what you
6 can say?

7 MR. PRYOR: Object -- I'm sorry. I
8 thought you were done.

9 Object, asked and answered.

10 MR. GREENFIELD: I don't believe I ever
11 got an answer to the question about vulgarity.

12 THE COURT: There is not an answer to this
13 one.

14 THE WITNESS: I would never be vulgar and
15 never was to any employee. So, no, I don't believe
16 in vulgarity.

17 BY MR. GREENFIELD:

18 Q. But you could if you wanted to, correct?

19 Because you believe --

20 A. That's a right, but I don't believe that with
21 my heart that I would ever do that.

22 Q. And I'm just -- and I understand that. I'm
23 just asking you what you believe the limits on what
24 you can say are.

25 There is no roof on that vulgarity, is there?

1 You believe that's your right, correct?

2 A. The first amendment in the Constitution gives
3 us rights to do --

4 MR. GREENFIELD: Objection, your Honor,
5 non-responsive, move to strike.

6 MR. PRYOR: She's entitled to answer his
7 question.

8 THE COURT: Hold on. No speaking
9 objections.

10 I will overrule.

11 You can answer the question.

12 BY MR. GREENFIELD:

13 Q. Ms. Carter, you don't have First Amendment
14 right claims in this case, do you?

15 A. Under my union, yes.

16 MR. PRYOR: She didn't get to answer.

17 THE COURT: I will let her finish her
18 prior answer.

19 MR. PRYOR: Yes. About the First
20 Amendment?

21 THE WITNESS: Under my union, there is a
22 Bill of Rights, and the very first thing is freedom
23 of speech.

24 Would I be vulgar to another just regular
25 flight attendant? First of all, I don't believe

1 what I sent was vulgar. It's heartbreaking. And I
2 sent it to one person, and she was my union
3 president.

4 BY MR. GREENFIELD:

5 Q. And, again, Ms. Stone -- or Ms. Carter, excuse
6 me -- I'm not asking you about the post.

7 A. No, I don't believe that it is just over the
8 top like that.

9 Vulgarity, let's say it is sexual, and what I
10 sent was costumes of what women were wearing.

11 MR. GREENFIELD: And again, objection,
12 non-responsive, move to strike.

13 THE COURT: I will sustain that.

14 BY MR. GREENFIELD:

15 Q. Ms. Carter, I'm not asking you about what you
16 sent. We all know what you sent. Okay?

17 I'm asking about what you think you are allowed
18 to do in the workplace? Okay? That's just what we
19 are talking about.

20 A. To a normal employee? To a normal flight
21 attendant that I'm working with, no.

22 MR. GREENFIELD: Objection, your Honor,
23 non-responsive, move to strike. She's testifying.
24 I have not asked a question.

25 MR. PRYOR: Object to --

1 THE COURT: Hold on. Hold on.

2 MR. PRYOR: She's answering it.

3 THE COURT: I think she's answering your
4 question.

5 You can finish your answer.

6 THE WITNESS: To a normal member,
7 employee, flight attendant, that I work with, I
8 would have never sent, nor do I agree with sending
9 that to just a regular flight attendant unless they
10 were spending my money and representing me in an
11 action.

12 BY MR. GREENFIELD:

13 Q. Okay. Ms. Carter, again, I'm not asking you
14 what you sent or --

15 A. I believe in the freedom of speech.

16 MR. GREENFIELD: Objection, your Honor,
17 move to strike. Non-responsive.

18 THE COURT: Sustained.

19 BY MR. GREENFIELD:

20 Q. Ms. Carter, I'm just trying to find out, so we
21 can all understand --

22 A. Yes. I'm just going to answer yes. We do have
23 that right.

24 Do I think it would be something that I would
25 do to just a normal flight attendant? No. My union

1 president.

2 MR. GREENFIELD: Objection,
3 non-responsive. Move to strike everything after "we
4 have the right to do that."

5 THE COURT: Sustained.

6 BY MR. GREENFIELD:

7 Q. And because you have that right, Ms. Carter,
8 you believe you could -- I'm not saying that you
9 would -- but you could send vulgar messages to a
10 coworker in support of your religious beliefs,
11 correct?

12 MR. PRYOR: Your Honor, object on
13 relevance and vagueness. And this seems to be --

14 THE COURT: Hold on. That is speaking.

15 MR. PRYOR: -- a hypothetical concept
16 without sufficient standing.

17 THE COURT: I will allow the question if
18 you can answer.

19 THE WITNESS: If an employee feels it
20 necessary, under the -- and this also goes under the
21 RLA, between union members, and that means members.

22 You are asking me members --

23 MR. GREENFIELD: Objection, your Honor.

24 THE WITNESS: -- is that correct?

25 MR. GREENFIELD: Move to strike,

1 non-responsive.

2 I'm asking about her -- what -- if she
3 could -- if she felt she could send vulgar messages,
4 if she had the right to send vulgar messages to
5 other employees, as long it was in support of her
6 Christian beliefs.

7 THE COURT: I think she was answering your
8 question, so I'm not going to strike it.

9 You can ask a new question.

10 BY MR. GREENFIELD:

11 Q. Do you believe you can do that?

12 A. Under the First Amendment --

13 MR. PRYOR: Object to not what occurred in
14 this case.

15 THE COURT: I understand that that's what
16 relevance means.

17 So I'm overruling and you can answer the
18 question.

19 THE WITNESS: Under the First Amendment,
20 we should be given a right to send -- now, there may
21 be consequences, but to send to somebody a message,
22 a private message, yes.

23 BY MR. GREENFIELD:

24 Q. And you agree that there can be consequences to
25 sending those messages, just like you just

1 testified. Correct?

2 A. To a -- under the context of just sending it,
3 yes. But under the consequence -- or under the
4 circumstances of an action and responding to that
5 action that my union president did, I feel I have
6 every right to do that.

7 Q. Again, Ms. Stone --

8 MR. GREENFIELD: Objection,
9 non-responsive. Move to strike.

10 MR. PRYOR: Your Honor, it's absolutely
11 responsive.

12 THE COURT: Hold on.

13 I will deny that request.

14 You can ask a new question.

15 MR. GREENFIELD: I will.

16 BY MR. GREENFIELD:

17 Q. Should the religions of all Southwest employees
18 be protected in the same way?

19 A. Yes.

20 Q. So you would agree that everyone in the
21 workplace can say whatever they want to other
22 employees as long as it was motivated by their
23 religious beliefs, isn't that right?

24 MR. PRYOR: Object, mischaracterizes her
25 testimony. She explained --

1 THE COURT: Hold on. Hold on. No, no,
2 no.

3 I will sustain that.

4 MR. GREENFIELD: Then may I backtrack to
5 get some clarity to --

6 THE COURT: You may.

7 MR. GREENFIELD: -- flesh that out, your
8 Honor?

9 THE COURT: You may.

10 BY MR. GREENFIELD:

11 Q. You have testified that you should be able to
12 say whatever you want, however you want, if it is in
13 support of your Christian beliefs, correct?

14 A. Yes.

15 Q. Okay. And you believe that all religions at
16 Southwest should be protected in the same way,
17 correct?

18 A. Yes.

19 Q. So now we get to the big point.

20 So if everyone can say whatever they want to
21 their employees, as long as it was motivated by
22 their religious beliefs, you believe that to be
23 true, correct?

24 A. Yes. I believe that you should be able to
25 speak what you believe in, yes, I do.

1 Q. All right.

2 Let's move on and talk about one more rule that
3 you believe should be applied to you and your voice.
4 Okay?

5 A. Okay.

6 Q. You believe that because Audrey Stone was the
7 union president, no matter what you did, she
8 shouldn't be able to report you to Southwest
9 Airlines, correct?

10 A. Correct.

11 Q. In fact, you believe that if it was an
12 African-American board member, you could send a
13 message including the N word, and they shouldn't be
14 able to report you to Southwest Airlines, isn't that
15 correct?

16 A. That is not correct.

17 Q. If you were to send a message to a union
18 officer who is an African-American including the N
19 word, would it be appropriate for that person to
20 report you to Southwest Airlines?

21 A. That's a defamation, and that -- that, first
22 off, should be handled through the union, and from
23 there, I don't know the actions.

24 But it should be -- and it would be something
25 that the union would probably take them out of the

1 membership or --

2 Q. Well, you couldn't do that to a non-member,
3 could you?

4 A. There were avenues that they could have taken
5 through the union membership.

6 Q. Is it your testimony that the union has the
7 ability to punish you as a non-member for things you
8 say? Officially as far as in a union capacity. Can
9 they bring you up on charges?

10 A. No, I don't believe they can bring me up on
11 charges.

12 Q. No, they cannot, Ms. Carter, can they?

13 A. That's why they were searching for other
14 avenues --

15 Q. Well, my question, Ms. Carter --

16 A. -- if you recall.

17 THE COURT: Hold on. We've got to keep
18 separation between the questions and answers.

19 You can ask a new question.

20 MR. GREENFIELD: Yes, your Honor.

21 BY MR. GREENFIELD:

22 Q. Back to my question.

23 If you were to send a message to a union
24 officer, you, as a non-member, who is an
25 African-American, including the N word, your

1 testimony is that it would be inappropriate for that
2 person to report you to Southwest Airlines, isn't
3 that right?

4 A. I think we would probably go to -- oh, what is
5 it called? -- professional standards, and
6 professional standards is within the company.

7 MR. GREENFIELD: Objection, your Honor,
8 non-responsive, move to strike. I asked if she
9 thought it would be inappropriate for that person to
10 report her.

11 THE COURT: Hold on. That's a speaking
12 objection. Hold on.

13 I will overrule that.

14 THE WITNESS: First of all, I would never
15 use that word.

16 Second of all, I think that's a
17 derogatory, horrible statement to somebody.

18 So I guess if the union felt that it was
19 so derogatory, yes, then they would have to go to
20 the company.

21 BY MR. GREENFIELD:

22 Q. And, Ms. Carter, I understand. I'm not saying
23 you would. I'm saying that you could, and the union
24 should not be able to turn you in to the company.
25 That is correct, right?

1 MR. PRYOR: Your Honor, I object to him
2 putting her in an example of using --

3 THE COURT: That is a speaking objection.
4 What's your --

5 MR. PRYOR: Object to improper question,
6 improper hypothetical, putting her in that position.

7 THE COURT: Yes. I think I'll sustain
8 that at this point.

9 BY MR. GREENFIELD:

10 Q. You believe an objector, okay, let's just take
11 the -- let's just take that specific example.

12 You believe an objector, if they were to send a
13 message to a union officer who is African-American
14 including the N word, it would be inappropriate to
15 turn that person in to Southwest Airlines for doing
16 that, correct?

17 MR. PRYOR: Object, incomplete
18 hypothetical as opposed to other avenues.

19 THE COURT: I will sustain that at this
20 point.

21 BY MR. GREENFIELD:

22 Q. In fact, you believe that you can actually make
23 physical threats of violence to a board member and
24 they shouldn't be able to turn you in, isn't that
25 right?

1 MR. PRYOR: Once again, an incomplete
2 hypothetical. Acting like that's the only --

3 THE COURT: Hold on. Just give me your
4 objection, not your --

5 MR. PRYOR: Improper hypothetical.

6 THE COURT: I will allow this one.

7 THE WITNESS: If it is a physical threat,
8 like execution, yes. And I also think they should
9 call the police, police first. If they feel their
10 life -- such as targeted executions, yes. I think
11 that that would be something that they should take
12 to the police and then to Southwest.

13 BY MR. GREENFIELD:

14 Q. Just so we are clear, because you said yes and
15 it was I think a bit ambiguous.

16 Do you believe that you can make -- that a
17 threat of physical violence can be made without
18 those repercussions?

19 MR. PRYOR: Object to the hypothetical.

20 THE WITNESS: I don't understand.

21 MR. PRYOR: Asked and answered. Object,
22 403.

23 MR. GREENFIELD: I literally don't know
24 the answer.

25 THE COURT: Hold on.

1 I will allow it.

2 THE WITNESS: Okay. I didn't understand
3 that question.

4 BY MR. GREENFIELD:

5 Q. All right. So just to take a step back.

6 We are talking about what you believe should
7 apply to you and your voice, okay? Yes?

8 A. Yes.

9 Q. Okay. And you believe that you can make a
10 physical threat of violence to an executive board
11 member in a message and that they cannot turn you in
12 to the company, isn't that correct?

13 MR. PRYOR: Object. Placing her in the
14 position of doing something improper that she
15 hasn't. It's an improper hypothetical.

16 THE COURT: I will allow her to answer
17 this one last question.

18 THE WITNESS: I never and would never
19 suggest physical violence or bring physical violence
20 or talk about physical violence to anyone at work --

21 BY MR. GREENFIELD:

22 Q. I know you wouldn't.

23 A. -- or a union member.

24 Q. I apologize. I understand that --

25 A. Place me in that position.

1 Q. I understand that your testimony is that you
2 wouldn't do it.

3 But you believe you could, and that the union
4 cannot turn you in to the company, isn't that
5 correct?

6 MR. PRYOR: Same objection, and we are now
7 beyond one last time.

8 THE COURT: I will sustain that.

9 BY MR. GREENFIELD:

10 Q. I believe your testimony is that on a threat of
11 physical violence, they should call the police,
12 right?

13 MR. PRYOR: Object, your Honor. Asked and
14 answered and skirting your ruling.

15 MR. GREENFIELD: I have not asked anything
16 about --

17 THE COURT: I will let him revisit this
18 one last time.

19 BY MR. GREENFIELD:

20 Q. A threat of physical violence is made. You
21 think the option is that the board member should
22 call the police, correct?

23 A. I think board member or even just a regular
24 flight attendant should call the police first, yes.

25 Q. I'm talking about board members. You believe

1 the board member should call the police, correct?

2 A. If they feel physical threat, yes.

3 Q. Call the police, but not --

4 A. And file a complaint.

5 Q. Call the police, but not report it to the
6 company, right?

7 MR. PRYOR: Object, asked and answered.

8 THE COURT: Sustained.

9 BY MR. GREENFIELD:

10 Q. Ms. Carter, you believe because Ms. Stone was
11 the union president, no matter what you did, she
12 couldn't report you, correct?

13 MR. PRYOR: Object, asked and answered
14 multiple times including --

15 THE COURT: I'll allow it.

16 BY MR. GREENFIELD:

17 Q. Isn't that right, Ms. Stone -- or Ms. Carter?

18 A. That -- repeat that question, please.

19 Q. Do you believe that because Audrey Stone was
20 the union president, no matter what you did, no
21 matter what you said, she shouldn't report you to
22 Southwest Airlines. Isn't that correct?

23 A. No matter what I said as long as it's not a
24 threat.

25 Q. So you are making -- just so we understand, you

1 are making a caveat for a threat now, is that
2 correct?

3 MR. PRYOR: Object, calls for a legal
4 conclusion, and her opinion is not relevant on
5 something not at issue.

6 THE COURT: Overruled.

7 She can answer.

8 THE WITNESS: I believe that we can speak
9 to our union president when there has been an action
10 and we are dissenting. We have every right to say
11 anything to our union president, yes, within the
12 context of what they have done. Especially when
13 they are using our money to do it.

14 BY MR. GREENFIELD:

15 Q. And you could even include a physical threat,
16 isn't that right?

17 MR. PRYOR: Object, asked and answered.

18 BY MR. GREENFIELD:

19 Q. As long as it was talking about what they
20 were --

21 MR. PRYOR: We've been through the
22 physical threats.

23 THE COURT: Hold on. He's got to finish
24 his question first.

25 Can you restate your question,

1 Mr. Greenfield?

2 BY MR. GREENFIELD:

3 Q. My understanding is that when I asked you a
4 question about what you -- what you believe you
5 could do and whether or not the union or a president
6 could report you, you parsed out that it couldn't
7 include a physical threat.

8 Could you or could you not make a threat --

9 A. A union member --

10 Q. Excuse me. Excuse me.

11 Could you or could you not make a threat of
12 physical violence as long it was tied to your
13 anti-union speech and not suffer the consequences of
14 being reported by the union president? That is what
15 you believe, correct?

16 MR. PRYOR: Object, improper hypothetical.
17 Reported to who?

18 THE COURT: I'll allow it.

19 BY MR. GREENFIELD:

20 Q. That's what you believe, right?

21 A. Well, I can tell you this. It has been done
22 before and people weren't turned in.

23 MR. GREENFIELD: Objection, your Honor,
24 move to strike, non-responsive.

25 THE COURT: Sustained.

1 MR. GREENFIELD: I'm just asking about
2 her.

3 BY MR. GREENFIELD:

4 Q. You believe you can do that, right, Ms. Carter?
5 You believe you can do that?

6 A. Somebody can make a physical threat, and then
7 that person on the union board would actually, I
8 believe, would call the police, file a report, and
9 that report, if it was deemed necessary to involve
10 Southwest Airlines, yes, it would go to Southwest
11 Airlines.

12 Q. But that's the point, Ms. Carter.

13 You believe that the executive board member can
14 and should call the police, but they cannot inform
15 their company of a physical threat. That's your
16 testimony?

17 A. If it is a direct physical threat such as I'm
18 going to execute you, yes. But I would also first
19 involve the police so that you have a formal
20 complaint to also take to Southwest.

21 Q. All right. So now we are back to that same
22 point, because you are parsing out your explanation
23 a little bit.

24 I asked if you believed that because Audrey
25 Stone was the union president, no matter what you

1 did, she shouldn't be able to report you to
2 Southwest Airlines, right?

3 A. In the context of union business, no, she
4 should not.

5 Q. In the context of union business. We can agree
6 on that. She should not be able to even if it
7 includes a physical threat, right? You believe --

8 A. I did not physically threaten her.

9 MR. GREENFIELD: Objection, your Honor,
10 non-responsive. Move to strike. I'm in the middle
11 of my question.

12 THE COURT: Hold on. We've got to keep
13 separation between questions and answers.

14 So I'm not going to strike it, but he
15 needs to finish his question, then she needs to
16 finish her answer.

17 You can repeat your question.

18 BY MR. GREENFIELD:

19 Q. Okay. Let's dial it back to the beginning
20 because it got stepped on for the record.

21 I asked you whether you believe that because
22 Audrey Stone was the union president, no matter what
23 you did, as long as it was tied to your protected
24 union speech, that she shouldn't be able report you
25 to Southwest Airlines.

1 MR. PRYOR: Your Honor --

2 BY MR. GREENFIELD:

3 Q. And now it is your testimony that -- but not
4 physical threats, right?

5 MR. PRYOR: Object. First of all, it's
6 now compound, but also he's -- it's like --

7 THE COURT: Just state your objection. No
8 speaking objections.

9 MR. PRYOR: -- he's putting her in an
10 example of doing something highly improper that
11 there is no evidence she's done.

12 THE COURT: Okay, that is still a speaking
13 objection.

14 MR. PRYOR: Well. I didn't know -- can I
15 just say --

16 THE COURT: Improper hypothetical.

17 MR. PRYOR: Improper hypothetical.

18 THE COURT: I will sustain that.

19 MR. PRYOR: Sorry.

20 THE COURT: Counsel, I'm wondering if we
21 can break for lunch. It is 12:24.

22 MR. GREENFIELD: This is my last point,
23 your Honor.

24 THE COURT: Are you within five minutes?

25 MR. GREENFIELD: I'm within five minutes.

1 THE COURT: Okay. Let's finish your
2 examination then.

3 BY MR. GREENFIELD:

4 Q. Do you or do you not believe that you can make
5 a threat of physical violence to a union president,
6 okay? As long it's tied to your speech, do you
7 believe -- to your union dissenting speech, do you
8 believe you can do that?

9 MR. PRYOR: Same objection. He's now
10 placing her -- same objection. Improper
11 hypothetical.

12 MR. GREENFIELD: It's not a hypothetical,
13 your Honor.

14 THE COURT: I will allow her to answer.

15 THE WITNESS: Please repeat that.

16 BY MR. GREENFIELD:

17 Q. Yes ma'am.

18 A. And please don't put me as the person
19 threatening because I have never threatened anybody
20 at my job.

21 Q. Ms. Carter, again, I'm not asking you -- I'm
22 not saying anything about what you did or whether
23 you would or won't used the N word. We are just
24 talking about what you believe you can do and the
25 limits to your voice, okay?

1 That's what I want the jury to understand.

2 A. Okay.

3 Q. Do you believe that you can make a threat of
4 physical violence to your union president as long as
5 you are also dissenting to the union's position on
6 whatever? Do you believe you can do that?

7 MR. PRYOR: Object, improper hypothetical.
8 Object, asked and answered.

9 MR. GREENFIELD: It is not a hypothetical.

10 THE COURT: I'll allow it.

11 BY MR. GREENFIELD:

12 Q. Do you believe you can do that, Ms. Carter?

13 MR. PRYOR: Same objection.

14 THE COURT: I'll allow it.

15 THE WITNESS: I believe that you can --
16 you can, and it has been done, make a threat to a
17 union officer.

18 Do I think that that is protected under
19 the RLA? A threat such as execution? No, I do not.

20 MR. GREENFIELD: Okay. I would like to
21 approach the witness for purposes of impeachment.

22 THE COURT: With what?

23 MR. GREENFIELD: Her deposition, your
24 Honor.

25

1 BY MR. GREENFIELD:

2 Q. Ms. Carter, do you remember giving a deposition
3 testimony tied to this case?

4 A. Yes. That has been a couple of years ago.
5 Yes, I do.

6 Q. During that deposition, did you swear to tell
7 the truth, the whole truth and nothing but the
8 truth?

9 A. Yes.

10 Q. Okay.

11 MR. GREENFIELD: May I approach the
12 witness, your Honor?

13 THE COURT: You may.

14 BY MR. GREENFIELD:

15 Q. Reading from page 46, can you read, please,
16 silently, as I read aloud.

17 "Had you sent Ms. Stone a message that said" --

18 MR. PRYOR: Object, improper use of
19 deposition.

20 THE COURT: I will sustain that.

21 And we need a microphone.

22 MR. GREENFIELD: May we approach sidebar?

23 THE COURT: You may.

24 (Thereupon, the following proceedings were
25 had at sidebar:)

1 MR. GREENFIELD: Your Honor, I presented
2 the testimony specifically on this issue. I have
3 shown page and line as to what I'm going to speak
4 on. I don't know where my mistake is in this
5 impeachment technique.

6 MR. PRYOR: First of all, he has to
7 establish that she said something inconsistent.

8 He asked a hypothetical now that is not
9 the question that was asked at deposition. It's a
10 different question.

11 She does say, in response to that
12 question, that, no, you shouldn't report it to
13 Southwest Airlines.

14 Now if he wants to ask those questions
15 there and see if she says something different, then
16 he can use the deposition. But not with the
17 hypothetical that is not that question.

18 THE COURT: That's my view --

19 MR. GREENFIELD: You want me to use the --

20 THE COURT: -- on all fours.

21 MR. PRYOR: I will use the exact language
22 on the page and then we will get to lunch.

23 (Thereupon, the sidebar was concluded and
24 the following proceedings were held in open
25 court:)

1 BY MR. GREENFIELD:

2 Q. Had you sent Ms. Stone a message that said,
3 "I'm going to harm you," it is your view, based on
4 what you have testified today, that it would be
5 inappropriate for her to report you to Southwest
6 Airlines, is that correct?

7 A. If I was going to harm her?

8 Q. Yes, ma'am.

9 A. I think that she should call the police.

10 Q. And my question is a little bit different,
11 ma'am.

12 My question is, would it be inappropriate for
13 her to report you to Southwest Airlines?

14 MR. PRYOR: Your Honor, I object. Can I
15 show you -- she doesn't even have it in front of
16 her. She gave the same answer.

17 THE COURT: Sidebar.

18 (Thereupon, the following proceedings were
19 had at sidebar:)

20 MR. PRYOR: He asked the question and she
21 gave the very same answer.

22 And then he said, "That is not my
23 question."

24 That is exactly what he asked.

25 MR. GREENFIELD: No. If you continue to

1 read down the page, she testifies that, look, if you
2 look at line 17 to 20 --

3 MR. PRYOR: We are not there yet, though.

4 MR. GREENFIELD: -- I'm asking a very
5 specific question. Because this is the next
6 question that's about to follow up. Because the
7 same thing happened at her deposition. She tried to
8 equivocate about the police.

9 17. "I'm asking a very specific question
10 I understand that you would have reported it to the
11 police. Would it be inappropriate for her to also
12 report you to Southwest Airlines?"

13 THE COURT: You need to move on to the
14 second question now. You haven't gotten there. The
15 first question is now consistent; we have got to get
16 to the second.

17 (Thereupon, the sidebar was concluded and
18 the following proceedings were held in open
19 court:)

20 BY MR. GREENFIELD:

21 Q. Okay, Ms. Carter.

22 So I'm asking a very specific --

23 MR. PRYOR: I would like the record to
24 reflect that my objection was sustained.

25 THE COURT: Correct.

1 BY MR. GREENFIELD:

2 Q. So I'm asking a very specific question. Okay?

3 I understand that you would have reported to
4 her to the police. Agreed. Would it be
5 inappropriate for her to also report it to Southwest
6 Airlines?

7 A. If the threat was real and the police report
8 shows it.

9 Q. The threat is just "I'm going to harm you."
10 That was the -- that was the quote.

11 I'm asking --

12 A. In what context? I'm going to harm you.

13 She should report it to the police, and if she
14 truly feels that she's being harmed, I still don't
15 believe that she should be going to Southwest
16 Airlines.

17 Q. Thank you, Ms. Carter.

18 You believe even if --

19 A. Go to the police.

20 MR. PRYOR: Wait. Object, asked and
21 answered.

22 BY MR. GREENFIELD:

23 Q. Even if you said, "I'm going to harm you" --

24 A. Go to the police.

25 Q. -- she should not be able to report it to

1 Southwest Airlines, correct?

2 MR. PRYOR: She's answered the question.

3 THE WITNESS: Go to the police, and then
4 they will file the complaint to Southwest Airlines.

5 BY MR. GREENFIELD:

6 Q. Ma'am, I understand you are talking about the
7 police.

8 MR. GREENFIELD: And I object and move to
9 strike as non-responsive.

10 BY MR. GREENFIELD:

11 Q. I'm asking --

12 A. No, I don't believe she should go to Southwest.
13 I believe she should go to the police.

14 MR. GREENFIELD: Thank you, Ms. Carter.

15 THE WITNESS: You are welcome.

16 THE COURT: Are you passing the witness?

17 MR. GREENFIELD: Yes, I pass the witness.
18 I apologize.

19 THE COURT: Okay. Now we should take
20 lunch.

21 So you can only talk to your fellow
22 jurors, not about the case. You can't talk to
23 anyone else other than fellow jurors and court
24 personnel. And don't do any research about the
25 case.

1 We will see you back here in one hour at
2 1:33.

3 All rise for the jury.

4 (The jurors exited the courtroom.)

5 THE COURT: Okay. So anything we need to
6 cover? And I guess the age-old question of do I
7 tell a witness, this witness, that they can't talk
8 to anyone about the case? I'm trying to think of my
9 recollection. And I think in non-overnight breaks,
10 if they are continuous testimony on the stand, I ask
11 them not to talk to a lawyer even if they have Fifth
12 or Seventh Amendment rights.

13 MR. PRYOR: Your Honor, I haven't talked
14 to her since Friday or whatever, so it's not an
15 issue.

16 But I would like to know where we are
17 going. Is this it?

18 THE COURT: Any other witnesses that you
19 plan to call after Ms. Carter?

20 MR. GREENFIELD: I plan on resting, your
21 Honor.

22 THE COURT: Thanks.

23 MR. PRYOR: Your Honor, there is a matter
24 to raise.

25 THE COURT: Yes.

1 MR. PRYOR: I request just some additional
2 time. And --

3 THE COURT: Okay. Just a second.

4 Ms. Carter, you don't have to stay
5 standing anymore. You can leave the box. But I
6 just ask you to not talk to anyone about the case
7 during the lunch break, since you're still a
8 witness.

9 MR. PRYOR: And, your Honor, I think we
10 might end up -- she would be happy to step outside
11 for a minute while we talk if you are concerned
12 about the rule with her.

13 I'll have her step outside --

14 THE COURT: That seems appropriate.

15 MR. PRYOR: -- so I don't have to worry
16 about it.

17 Your Honor -- and I -- the case that they
18 have put on, I think you can see that their defense
19 to our claims did not require the same type of
20 time-wise, document-wise, witness-wise that we were
21 confronted with in presenting our case.

22 And I also respectfully suggest to the
23 Court, I have almost pulled a muscle not answering
24 questions of witnesses that I would love to, and I
25 fully acknowledge that we have not cut into muscle

1 at all in terms of our ability to provide a trial
2 for our client.

3 Having said that, I am faced at closing
4 with two parties that have an ocean of time, I think
5 at this point they could have four hours of closing,
6 and I have probably about 45 minutes. And that's --
7 I need to spend time with this witness on
8 cross-examination now.

9 And so I know the Court has a bucket of
10 three hours, and I would like some -- I think there
11 should be some limit on -- a maximum limit on time
12 to closing.

13 I don't think the intent was to offer 12
14 hours to the other side that they -- or 6, 12,
15 whatever it was. I think you get my point.

16 I don't think that the point was to allow
17 them to not have a need for that time and then to
18 clump it into closing, and I'm not saying that's
19 what they did. But I would like some time
20 protection in closing and I would like some
21 additional time.

22 There we go.

23 THE COURT: Okay. So what I will say
24 preliminarily, and then I will ask y'all's thoughts,
25 on time protection in closing, I'm not going to give

1 you all of their time and then tell them they can't
2 use theirs, which is how I interpret the latter part
3 of your request. I don't think you can do that.
4 You can't take over their case.

5 I'm not going to impose limits on closing.

6 What I do is -- I don't do that on opening
7 or closing. I give y'all a bucket of time and let
8 y'all use the time as you see fit.

9 So I will listen to arguments from Union
10 and Southwest on how much more time they are asking
11 for.

12 But before I do, let me ask you, what is
13 your concrete request on how much more time you
14 would need? And I understand your arguments are you
15 would use it on an adequate closing and you would
16 use it on cross-examination of Carter. You made a
17 reference at the sidebar to wanting to ask Sims
18 questions in a rebuttal case.

19 So what are you wanting and what is it
20 for? I want to drill down and be very concrete.

21 MR. PRYOR: It's difficult for me to be
22 concrete.

23 I would say I need 15 to 20 minutes with
24 Ms. Carter on cross, and then I don't know what they
25 will do, and I may need another five minutes after

1 that.

2 So I'm looking at using a substantial
3 portion of my 45 minutes that I have left that I
4 can't afford, and so I would ask that I have time
5 for that.

6 Then for closing -- and I understand what
7 the Court is saying. I'm not asking for their time.
8 I'm asking for a reasonable time limitation on
9 closing. But I guess I would like an hour for
10 closing. And I would -- assuming reasonable
11 restrictions on them. But I understand the Court's
12 position.

13 THE COURT: Understood.

14 Okay. So let me shift the baton over and
15 ask Southwest and the Union for their positions.

16 MR. McKEEBY: Our position is that we
17 oppose the request for more time, your Honor.

18 We have planned our trial presentation
19 under the rules set forth by this Court, we have
20 done our best to be efficient within those
21 guidelines, and we frankly have made strategic
22 decisions based on those time limitations.

23 To wit, what we did with Mr. Schneider.
24 We relied on the Court's rules and tried this case
25 within those rules.

1 To now give yet more time to plaintiffs
2 is -- is not fair, particularly given what the Court
3 mentioned yesterday about not holding any
4 efficiencies on the side of defendants against us.
5 I feel like that is effectively what is being done
6 here. We have been efficient.

7 And, frankly, I'm not comfortable
8 criticizing opposing counsel, but they have not been
9 efficient from the time -- from the very beginning
10 of this case when my opening statement was
11 interrupted on an issue that was entirely covered by
12 a motion in limine ruling, to the constant sidebars,
13 I won't say every time, but almost every time an
14 objection to sustain, we are up there spending time.

15 And, frankly, the examination style of
16 opposing counsel, which is I understand something
17 that is at some level effective and may have been so
18 in the past, but it's questions that are vague and
19 asked in a confrontational style.

20 And that's fine, there is nothing wrong
21 with that, but it is also not the type of
22 examination technique that is going to lend itself
23 to an efficient introduction of the testimony.

24 So all of those considerations mitigate in
25 favor of not providing any more time.

1 THE COURT: Understood.

2 Union position.

3 MR. GREENFIELD: Yes. I think the most
4 important thing to look at, from my vantage point,
5 is an issue of prejudice.

6 I have bent over backwards, I know
7 personally, I'm not going to speak for Southwest,
8 but to present our case in a way that complied with
9 the original six hours you gave us. Now, ultimately
10 you said maybe there might be more time if we needed
11 it.

12 The way I asked questions about Southwest
13 witnesses, the way I asked questions about -- to
14 Ms. Stone, if I knew all of this entire -- if we
15 were going to rip up the time sheets, I would have
16 approached the case completely differently. I tried
17 to play within the rules of the game that you set
18 forth.

19 And I don't believe they want to do that
20 or have ever had any intention of doing that, your
21 Honor. They have been asking since the very moment
22 the trial started for more time. They asked for
23 more time before it started. You said no. They
24 asked for more time after their opening. They asked
25 for more time almost after every witness.

1 It has never been their intention to
2 comply with the timing rules you presented, your
3 Honor.

4 MR. PRYOR: Response.

5 THE COURT: Briefly.

6 MR. PRYOR: First of all, we are all
7 operating under the same order here, and that order
8 says that you can ask for more time. We all know
9 that is an opportunity that your order affords. So
10 no one is being prejudiced.

11 The second is, in terms of our
12 efficiencies, while we have foregone questions we
13 would love to ask of numerous witnesses, and I think
14 that we have been as efficient as we can within the
15 bounds of zealously representing our client's
16 position to this Court, I don't think it's
17 unreasonable, given we are dealing with two parties
18 here that are aligned, that don't have the same
19 burdens and efforts required to put on our case that
20 they are dealing with.

21 I'd ask the Court for more time so we can
22 adequately cross-examine Ms. Carter and adequately
23 summarize the evidence in our closing.

24 THE COURT: Okay. So here is my ruling.

25 I'm going to give you a few more minutes,

1 but not nearly what you want, and not for the
2 reasons that any of us have talked about.

3 I'm going to give you 15 more minutes for
4 the purpose of cross-examining Carter, and here is
5 why.

6 When I let you get into the arbitration
7 testimony, if I'm a juror sitting over here, I'm
8 wondering, why wasn't this decided in arbitration?

9 I think it is fair game for you to ask her
10 on cross-examination if her claims that are
11 presented in this lawsuit at this time were at issue
12 in the arbitration. I think you can do that without
13 running afoul of my motion in limine and correct any
14 conceptions that the jury may have.

15 I'm going back to the other points that
16 y'all made. I echo them, and that is the reason why
17 I'm not granting more time to you.

18 But I do think that there is this --
19 perhaps an inference now regarding arbitration that
20 you are entitled to clean up.

21 I did give you the leeway of going there,
22 and I don't think you crossed over the line that I
23 was thinking of, which I appreciate. But it does
24 leave the jurors with a question in their minds of,
25 well, why are we here? Why didn't this end at

1 arbitration?

2 Okay. So what did I say? 15 minutes. So
3 you have 15 minutes that doesn't count to the other
4 46 minutes you have already got.

5 MR. PRYOR: If I use ten, can I keep my
6 five?

7 THE COURT: I'll give you the 15 to use
8 how you see fit, but I need you to use it wisely.
9 Does that make sense?

10 MR. PRYOR: It does.

11 THE COURT: So you are now sitting at an
12 hour and one minute.

13 MR. GREENFIELD: And that includes his
14 time for closing?

15 THE COURT: Yes. And I'm not putting a
16 limit on how much of your time you are going to use
17 for closing.

18 I will tell everyone, before I go into
19 closing, you can take as much time as you want.
20 I've never seen a closing that lasted upwards of an
21 hour that a jury appreciated, right? So you can
22 take that for what you will.

23 But jurors appreciate succinct closings
24 and they're more powerful if they do succinctly
25 summarize the evidence. Get to the point and then

1 end the closing argument.

2 All right. Any other issues before we
3 come back?

4 Okay. So when we come back, you are going
5 to cross-examine. We will go through however many
6 rounds we go through. You've got your extra 15
7 minutes. But then at the point that you rest,
8 because this is your last witness, then we will kick
9 the jury out, have another motion, I will rule on
10 both motions, and we will proceed from there.

11 MR. McKEEBY: Your Honor, two questions.
12 Do I get the opportunity to examine Ms. Stone -- I
13 mean Ms. Carter?

14 THE COURT: I should have asked you next.
15 Why did I go out of order?

16 I'm sorry. I should have asked you next.
17 Based on --

18 MR. McKEEBY: He rested, so it should be
19 me next, and then --

20 THE COURT: Yes. So I didn't tell you you
21 can go next. So you should be next, Mr. McKeeby,
22 and then he'll go.

23 MR. McKEEBY: And it is not going to be
24 much.

25 THE COURT: Right. And then we will go

1 back for a round two if needed.

2 MR. McKEEBY: It is not going to be long.

3 THE COURT: But thank you. I'm used to
4 going in a wheel this way, and I need to -- the
5 wheel is now different.

6 MR. McKEEBY: The other question is may
7 Mr. Sims be excused?

8 MR. PRYOR: Yes.

9 THE COURT: Okay. Any other questions?

10 So I think I cut the jury loose at 12:33,
11 so 1:33 is when we should back in here. See you
12 soon.

13 THE COURT SECURITY OFFICER: All rise.
14 (Recess.)

15 THE COURT SECURITY OFFICER: All rise.

16 THE COURT: Thank you. One quick update
17 before we get the jury. Y'all should get jury
18 questions any minute, the latest round from me.

19 So we will come back in, we will finish up
20 this round. Then I will kick the jury out for
21 motions and rulings. And then see if you have a
22 rebuttal case when the jury comes back in.

23 And then if you don't have a rebuttal
24 case, then I need to send them out because I'm
25 assuming there is going to be a renewed Rule 29

1 motion. Then bring the jury back in. And then we
2 will see what time we are. We may just send them
3 home early for the day, so we can do charge
4 conference and printing it.

5 If we have beaucoups of time, I will keep
6 them around. But I want to make sure we have time
7 for the formal charge conference and printing the
8 charge.

9 Does that make sense for a run of show?
10 Any questions?

11 Okay. We will bring them in.

12 (The jurors entered the courtroom.)

13 THE COURT: Thank you. Be seated.

14 Okay. So Mr. Greenfield, you passed on
15 the witness.

16 Which means, Mr. McKeeby, do you have
17 questions?

18 MR. MCKEEBY: No questions for the
19 witness.

20 THE COURT: Okay. So now I need to ask
21 you, Mr. Pryor, do you want to question the witness?

22 CROSS-EXAMINATION

23 BY MR. PRYOR:

24 Q. Ms. Carter, I feel like we have been here
25 before, but let me ask you, in terms of saying

1 anything you want to say, whether it be religious
2 speech, union activity, do you believe that that
3 includes you should be able to engage in illegal
4 speech?

5 MR. GREENFIELD: Objection, your Honor,
6 leading the witness.

7 MR. PRYOR: It's redirect.

8 THE COURT: I'll allow it.

9 THE WITNESS: No, not illegal speech.

10 BY MR. PRYOR:

11 Q. And if you defamed someone, if you say
12 something knowingly false, do you think you should
13 be able to get sued for that?

14 A. Oh, yes, yes.

15 MR. GREENFIELD: Objection, your Honor
16 leading the witness.

17 THE COURT: I'll allow it.

18 BY MR. PRYOR:

19 Q. And also, you talked about the workplace
20 itself. You agree to that there should be
21 reasonable limitations so you can keep peace in the
22 workplace?

23 A. Yes.

24 Q. Okay.

25 You didn't sign the recall petition because

1 were an objector and you weren't allowed to sign it,
2 right?

3 A. Correct.

4 Q. The Step 2 and arbitration, you were asked some
5 questions that led to those two topics. Just want
6 to make sure we are still very clear on that, that
7 those processes did not involve your claims as to
8 your religious freedoms and your union activities
9 that are before this court today, true?

10 A. That is correct.

11 Q. Mistake.

12 The mistake that you are talking about is a
13 mistake of, I used social media and that gave them a
14 free shot at me?

15 A. Correct.

16 Q. And counsel is asking you questions about the N
17 word and threats to people, and whether or not even
18 if it is union activity, it should be reported to
19 the company.

20 Do you see an irony in a union coming in here
21 and talking about wanting the company to be involved
22 in union activity?

23 A. Yes.

24 Q. Is that the Local 556 that you feel is corrupt
25 and that is one of the reasons you are here?

1 A. Yes.

2 MR. GREENFIELD: Objection, your Honor,
3 leading the witness. If I can have a running
4 objection.

5 THE COURT: I'll give you the running
6 objection. I'll sustain that last objection.

7 Can you rephrase?

8 BY MR. PRYOR:

9 Q. Ma'am, do you believe, as you sit here today,
10 that you had the right to send the complaints that
11 you did, along with the videos that you sent, to the
12 private Facebook message of Audrey Stone TWU, your
13 union president?

14 A. Yes.

15 Q. Do you believe that you had the religious right
16 to post on Facebook what you did that you got fired
17 for?

18 A. Yes.

19 MR. PRYOR: Thank you.

20 THE COURT: Okay. So round two,
21 Mr. Greenfield.

22 MR. GREENFIELD: None, your Honor.

23 THE COURT: Okay.

24 Mr. McKeeby, anything?

25 MR. MCKEEBY: No questions.

1 THE COURT: Okay. And you, one last
2 question --

3 MR. PRYOR: No questions on my questions,
4 your Honor.

5 THE COURT: That's right, you don't need
6 to question based on your questions.

7 Okay. Ms. Carter, again, you can leave
8 the witness box and return to your rightful seat in
9 the courtroom.

10 Okay. Any other witnesses that the union
11 wants to put on during its case?

12 MR. GREENFIELD: The union rests, your
13 Honor.

14 THE COURT: Okay. So remember, any time
15 someone says the word "rest," now y'all got to go
16 back out for your break. I'm sorry.

17 So same instructions as always: You can
18 talk to your fellow jurors and court personnel, not
19 about the case; can't talk to anyone else; can't do
20 any research. We will see you here in a few
21 minutes.

22 All rise for the jury.

23 (The jurors exited the courtroom.)

24 THE COURT: Okay. You can be seated.

25 Okay. So now we've had both Defendants

1 rest, so let me turn it back to you, Mr. Gilliam.
2 You can make your motion as to the union, and then I
3 held in abeyance my ruling as to Southwest and your
4 motion as to Southwest. So I need to rule on both
5 of those motions. So I will turn the floor over to
6 you. You can go there or the podium. I don't -- I
7 can keep looking over at you like this.

8 MR. GILLIAM: I like the podium a little
9 bit better.

10 So at this time, we would move for
11 directed verdict against Local 556 on all claims, as
12 to liability.

13 Let's start first with the RLA retaliation
14 claim. We've -- the testimony and all of the
15 evidence has shown that Ms. Stone reported
16 Ms. Carter for her Facebook videos and messages that
17 were privately sent to her that were talking about
18 nothing but union -- well, opposing the Women's
19 March and union activity, RLA-protected activity.

20 Ms. Stone couldn't identify anything that
21 wasn't RLA-protected activity.

22 All of those posts on their face, they
23 mention the recall, they mention objecting to the
24 union's use of dues, they were opposing the union's
25 activities at the Women's March.

1 So there is -- Ms. Stone was, like I said,
2 never able to identify anything that wasn't
3 protected activity.

4 Ms. Stone was acting within the scope of
5 her official capacity. Everything that Ms. Carter
6 sent her addressed union activities. They never had
7 any personal/interpersonal communications about work
8 or about anything else about -- apart from the union
9 and the union's activities.

10 Local 556 Vice President Nevarez testified
11 you cannot separate the employee from the union
12 president. She's always acting in the presidential
13 capacity.

14 Ms. Carter sent her messages to the Audrey
15 Stone TWU account. And Ms. Stone testified that she
16 used that Audrey Stone TWU account for union
17 business.

18 Also, Ms. Stone copied on her complaint
19 Naomi Hudson, the Southwest negotiating -- CBA
20 negotiating chair of their negotiating committee and
21 director of labor relations, as well as the vice
22 president, Sonya Lacore.

23 And historically, Ms. Stone's interactions
24 with these officials at Southwest was in the
25 capacity of negotiating social media discipline and

1 clemency for employees.

2 So of course, when she's engaging them,
3 she's acting within that capacity as well.

4 The -- and again, the videos and Facebook
5 messages privately sent to Ms. Stone were a
6 substantial or motivating factor.

7 There was another factor, we argue, as
8 Ms. Carter's religious beliefs, and we will move to
9 those in a second. But as to the RLA activity that
10 Ms. Carter engaged in, that was a motivating factor.
11 When Ms. Stone reported Ms. Carter, her complaint in
12 Exhibit 66 revealed that she's -- that Ms. Carter
13 was talking to her about events that transpired at
14 the Women's March, about events that she and the
15 union had participated in there.

16 And she also referred to Ms. Carter's
17 political comments. So in her meeting with
18 Southwest, she -- she was asked about Charlene
19 Carter and said she's very anti-union.

20 And what did she ask Southwest to do? She
21 said, Make Charlene and Chris Click, another recall
22 supporter and union opponent, to stop. Make them
23 stop.

24 Now, as for any sort of affirmative
25 defense, there is no affirmative defense that Local

1 556 could raise. It could raise -- its affirmative
2 defense has to be a non-discriminatory reason.

3 There are no non-discriminatory reasons. The only
4 reason would be Ms. Carter sending these videos and
5 messages that upset her.

6 But that is protected activity.

7 The reason -- well, the affirmative
8 defense has to be a non-discriminatory reason,
9 because if it is the same reason, there is no point
10 to the RLA's protections at all, and the statutory
11 text is totally eviscerated.

12 So there has got to be a point to those
13 RLA protections.

14 Now, let's move on to the Title VII
15 cause -- attempt to cause religious discrimination.

16 Again, I addressed how Ms. Stone was
17 acting in her official Local 556 capacity when she
18 reported Ms. Carter. Clearly, she attempted to
19 cause Southwest to discriminate against her. I
20 think it is clear that she was wanting Southwest
21 to -- to terminate her, but at least discipline her,
22 because she talked about all of the activities she
23 engaged in in her complaint, and then started
24 listing all of the different policies that Southwest
25 could terminate Ms. Carter under.

1 Policies that Ms. Stone had experience
2 with. Ms. Stone, in her social media statement that
3 she had released just two years before, said,
4 Employees are getting turned in and terminated for
5 these policies, for violating these policies.

6 So Ms. Stone knew exactly what the results
7 of her actions could be.

8 Importantly, on this religious
9 discrimination claim against Local 556, Ms. Stone's
10 email refers to Ms. Carter's religious comments. So
11 she knew exactly what she was reporting them for,
12 for these Facebook videos and messages.

13 So the other religious discrimination
14 claim against Local 556. Ms. Stone knows what the
15 duty of fair representation is. So she -- she knows
16 that treating -- that turning someone in for their
17 religious comments is, per se, treating them
18 differently from all of the other represented
19 employees that she knows she has to defend and
20 protect based on her duty of fair representation.
21 So it is, per se, discrimination.

22 She -- Ms. Stone also knew exactly what
23 she was doing because she testified that she talked
24 to her lawyers about accommodation and religious
25 discrimination.

1 She -- Ms. Stone's actions were in bad
2 faith as well, because she -- she believed that --
3 she testified to her belief that any employee
4 should -- who was engaging in protected activities
5 with the union should be protected and that the
6 Southwest policies don't apply. Ms. Stone testified
7 to that.

8 But she turned Carter in anyway.

9 And I think that these particular
10 religious discrimination issues, they get to the
11 duty of fair representation claim as well. Because
12 the discriminatory prong of arbitrary,
13 discriminatory and in bad faith is religious
14 discrimination.

15 So by engaging in religious
16 discrimination, Ms. Carter -- I mean, I'm sorry --
17 Ms. Stone and Local 556 violate the duty of fair
18 representation.

19 And the bad faith prong, again, just --
20 just described was that she believed that any time a
21 represented employee communicates with the union
22 about union activities is protected and Southwest
23 policies don't apply.

24 She negotiated that in the Collective
25 Bargaining Agreement.

1 Again, she turned Ms. Carter in anyway.
2 Let's get to the failure to accommodate
3 claim.

4 I will be quick here.

5 So here you have President Stone acting on
6 behalf of Local 556, reporting Ms. Carter. She --
7 she could have engaged in conversations with
8 Ms. Carter. She could have simply blocked her and
9 prevented her from having more communications, and
10 that was at least short of terminating her
11 employment.

12 So for that reason, just by the act of
13 turning Ms. Carter in, Audrey Stone, on behalf of
14 Local 556, who knew her affirmative obligations
15 under Title VII -- again, she testified to having
16 discussed those with a lawyer, she was well aware of
17 them -- knowing her affirmative obligations under
18 the duty of fair representation, repudiated any
19 obligation to take actions to make an exception for
20 Ms. Carter, make an exception for her religious
21 observances, beliefs and practices, and turned her
22 in.

23 And going back to the duty of fair
24 representation. So I did address the discriminatory
25 and in bad faith prongs. The -- as for the

1 arbitrary prong, under the Northern District of
2 Texas case McCall, treating someone differently
3 based on their -- their -- any sort of political
4 differentiation between represented employees is an
5 arbitrary action on the part of the Union president.

6 And even though I go through those
7 arbitrary, discriminatory and in bad faith prongs,
8 the fact is, is that the union has failed to meet a
9 couple of its -- its own burdens.

10 First of all, there is a presumption that
11 a union official acts in her official capacity. And
12 the union has not presented any evidence whatsoever
13 that she was acting outside of her official
14 capacity.

15 There is also the presumption that the
16 union breaches the duty of fair representation when
17 it causes another employee to be disciplined.

18 And there -- they must show, the union
19 must show, that President Stone acted in good faith
20 with rationale considerations, and representing its
21 constituency as a whole.

22 By President Stone's own definition, she
23 acted in bad faith because she turned in a
24 represented employee when she knows that Southwest
25 policies shouldn't be meddling in their

1 communications.

2 And it was -- it was Ms. Carter's protest
3 of the Women's March and union dissident activities
4 that -- that motivated Ms. Stone, not -- there were
5 no other rational considerations that the union has
6 shown.

7 And also, the third thing -- and these are
8 conjunctive elements -- the union also has to show
9 that it was representing its constituency as a
10 whole. How could it possibly be representing its
11 constituency as a whole when it is turning in a
12 protected employee for protected activities?

13 That doesn't represent the constituency as
14 a whole, it has -- it is targeting one member who
15 was opposing the union and who was supporting the
16 recall.

17 So again, I would like to also
18 specifically address how -- there were two
19 motivations here for Local 556 and Southwest. And
20 they wanted to discipline Ms. Carter for Facebook
21 videos and messages, and they were both RLA
22 protected and they were protected by Title VII.

23 The posts on Ms. Carter's Facebook page
24 were -- were protected under Title VII. She was
25 exercising her religious observances, beliefs and

1 practices and sharing her views with other flight
2 attendants.

3 And as for Southwest's defense of a nexus,
4 these -- these posts that they found that justified
5 their nexus were years old. And that the
6 uncontroverted testimony shows that these were three
7 to four years old and nobody ever disputed that,
8 nobody ever showed differently.

9 So for all of these reasons, I think the
10 Court should grant a directed verdict on all claims
11 against Southwest and Local 556.

12 THE COURT: Okay. Thank you, Mr. Gilliam.

13 Mr. Greenfield, can I hear your response?

14 MR. GREENFIELD: Yes, your Honor.

15 I think this case is interesting and
16 unique from the standpoint of we have four different
17 causes of action. Every single cause of action is
18 tied to the very same fact, right?

19 Reasonable accommodation. Failed to
20 accommodate Ms. Stone because -- or failed to
21 accommodate Ms. Carter because Ms. Stone turned her
22 in.

23 Religious discrimination. They
24 discriminated against her because they -- Ms. Stone
25 turned her in.

1 DFR claim. Violated because we turned her
2 in. Not about any other representation throughout
3 the whole process.

4 Same thing with the RLA.

5 All their claims came down to this one
6 issue.

7 And I think we have presented evidence
8 that support every element of all of those claims.
9 And I think we can start at the beginning with
10 official capacity.

11 And we will talk about this at the jury
12 charge, but official capacity is dispositive of
13 every single cause of action against the union. If
14 Ms. Stone was not acting in her official capacity,
15 then in no way could she bind the union, she was
16 just an employee.

17 So let's start with evidence that has come
18 on about her official capacity.

19 That is in dispute. That is why we made
20 past summary judgment. That is why we are here
21 before the Court. And some of the evidence that has
22 come out, we know that even Charlene Carter's own
23 exhibits show that the messages she sent were to
24 Audrey Stone, not Audrey Stone TWU. That is not
25 what the evidence shows.

1 That is what they have argued. They have
2 argued that Ms. Stone changed it. Their argument is
3 going to be that she changed it afterwards. But
4 that is not what the exhibits show. That is not
5 what Ms. Carter's evidence shows that she turned in
6 to the company.

7 Witness after witness testified that
8 employees don't lose their rights when they become
9 president of the Union. Ms. Stone was acting in her
10 capacity as an employee when she turned her in. She
11 has always that right. She never loses her rights
12 as an employee. Otherwise, her Title VII rights,
13 her rights to be free from harassment and
14 discrimination in the workplace become subservient
15 to Ms. Carter's.

16 Witness after witness testified that the
17 communications went too far. And that
18 Ms. Stone's -- or Ms. Carter's communications lost
19 their protection.

20 Speech can be protected in one part and
21 still be harassing and violative of the law and lose
22 those protections at the same time. The underlying
23 basis, she was dissenting against her union, agreed.
24 No dispute.

25 It was about her religious beliefs.

1 Agreed, no dispute.

2 So that in and of itself is protected.

3 But it then can lose -- it can lose that protection
4 and become harassing. We could all agree that if
5 Ms. Carter had sent the very same messages but left
6 a -- but tied around a note on a chopped off horse
7 head and left it at Ms. Stone's front door, we have
8 gone too far. We can't do that.

9 Or if it's tied to some sort of criminal
10 act, you can't do that. At some point, it loses
11 protection and it does cross over to being
12 harassing.

13 Regarding retaliation, we have also put on
14 temporal proximity evidence. Ms. Carter has been
15 anti-union since at least 2013. She sent
16 hundreds -- at least 100 -- I counted 98 pages of
17 private messages to Ms. Stone and no action was
18 taken against her.

19 She opposed she was part of the recall
20 petition in 2015. Ms. Stone didn't file any charges
21 on that.

22 Excuse me, your Honor.

23 THE COURT: It is okay.

24 MR. GREENFIELD: Just over and over, these
25 communications have gone on for years. And

1 Ms. Carter agreed to that, that she had been
2 dissenting again the union. She was against the
3 first tentative agreement as well. Again, no
4 actions were taken by Ms. Stone.

5 It all came after these specific videos.
6 Okay? And that is where we argue it went too far
7 and she lost her protection.

8 Regarding religion, we put on several
9 pieces of evidence regarding that, including that
10 Ms. Stone herself is pro life. So they are asking
11 the jury, and you as a matter of law, to ignore
12 that, the fact that Ms. Stone, as a pro life
13 individual, is discriminating against Ms. Carter for
14 her prop life stances. That obviously should go
15 before the jury and should be weighed.

16 Ms. Carter couldn't identify a single
17 individual who was treated more favorably than her.
18 It is just her.

19 On the failure to accommodate claim,
20 again, it ties back to the message itself. That it
21 was turned in -- that doing that -- but preventing
22 that, again, ties back to the official capacity
23 argument. If Ms. Stone made that as an employee,
24 she reserved the right to do that. She never
25 relinquishes the right to be free from harassment

1 and discrimination in the workplace.

2 And so the only accommodation that she
3 sought was that Ms. Stone not turn her in. That is
4 it.

5 And then we have several, several issues
6 of causation. Numerous parts of each claim that
7 Ms. Carter brings requires that they show beyond a
8 preponderance of the evidence that we caused the
9 termination.

10 That certainly is in dispute. Witness
11 after witness from Southwest testified that the
12 union had no interference into their investigation
13 process, had no weighing on the decision to
14 terminate. That was Southwest's decision.

15 And I believe that is actually very
16 heavily tied to Southwest's legitimate
17 non-discriminatory reason for the termination, which
18 you considered earlier in denying their motion on
19 that.

20 I have nothing else, your Honor.

21 THE COURT: All right. Thank you,
22 Mr. Greenfield.

23 So at this point, I will say that I have
24 both the directed verdict motions against Southwest
25 and the union fully argued. So I'm going to deny

1 both of those motions at this point. Like I said, I
2 never explain our reasons for what I'm doing, why I
3 am doing it. I just state my ruling on the record.

4 So based on that, we need to bring back in
5 the jury so we can hear if you have witnesses for a
6 rebuttal case. Yeah, that is fine. And then we
7 would close, close, close.

8 And then at this point, it is a close call
9 on whether there is any chance we could do a formal
10 charge conference, print the behemoth charge, and
11 read it by 5:00.

12 I think it will probably take me an hour
13 and a half to read it to them. I figure it will
14 take us an hour and a half to do a formal charge
15 conference and print it. Should we go for it?
16 Should we not? What do y'all think?

17 MR. PRYOR: What are you thinking of in
18 terms of start time tomorrow for closing?

19 THE COURT: So assuming we do a formal
20 charge conference today, send them home, then I
21 would think tomorrow at 9:00 we start, whether we
22 are starting with a reading of the charge tomorrow
23 or if we by some miracle get it read to them at the
24 end of the day today. So I think 9:00 tomorrow is
25 our start time regardless.

1 The one question I have for y'all is, do
2 we try to keep them here and do a formal charge
3 conference and print it so I can read them the
4 charge and get that done by 5? Or do we send them
5 home and say we are just doing the formal charge
6 conference today, getting it printed, and then we
7 will read it first thing tomorrow? Any thoughts?

8 MR. PRYOR: I'm going to turn to over to
9 my lawyer.

10 MR. McKEEBY: I think I would just send
11 them home. I mean, I think since it is not clear
12 that we are even going to get to it -- well, I mean,
13 I think it is fair to send them home rather than
14 keep them here with the hope that we would be able
15 to get to it. But obviously, that is your call.

16 THE COURT: That is my leaning. I'm
17 always optimistic around timing and it never works
18 out as fast as I think it will, right? Both my
19 reading of it and the formal charge conference.

20 MR. GREENFIELD: I agree, your Honor.

21 THE COURT: Any objection to we will bring
22 them back in; more witnesses, no; close, close,
23 close, send them home; and then we will go from
24 there?

25 MS. GREEN: I think that is appropriate,

1 your Honor.

2 THE COURT: Okay. Let's do it.

3 (The jurors entered the courtroom.)

4 THE COURT: Okay. You can be seated.

5 Okay. I mentioned at the outset of trial,
6 sometimes plaintiffs call rebuttal cases, so I need
7 to ask you, Mr. Pryor, does the plaintiff have any
8 more witnesses they want to call for a rebuttal
9 case?

10 MR. PRYOR: The plaintiff has no rebuttal
11 case, your Honor.

12 THE COURT: Okay. So does that mean the
13 plaintiff closes?

14 MR. PRYOR: The plaintiff's case closes
15 and is closed.

16 THE COURT: Okay. So that means
17 Southwest, now. Is Southwest closing?

18 MR. McKEEBY: Southwest is closed.

19 THE COURT: Okay. How about the Union?

20 MR. GREENFIELD: The Union is closed, your
21 Honor.

22 THE COURT: Okay. We heard rest, close,
23 close, close. What that means is, y'all get an
24 early day to go home while we have to sit here and
25 hash through a really long jury charge that I get to

1 read to you first thing tomorrow morning.

2 So what is left of the trial is, I read
3 you the jury charge, then we have closing arguments
4 from Carter, Southwest and the Union, and then the
5 case is yours. We hand the baton to you.

6 We have been working through the jury
7 charge since this case began and before then, but we
8 still have to work through all the legal argument,
9 now that the evidence is in, right? We didn't know
10 what the evidence would be until they all said,
11 closed.

12 So we need to stick around today for a few
13 more hours to finalize the jury charge, so that
14 tomorrow at 9:00, I can read it to you. It may take
15 an hour and a half. It is pretty long. I wish my
16 reading voice were like James Earl Jones', but it is
17 not.

18 So come caffeinated tomorrow at 9:00. You
19 will hear me boringly read a charge. And then you
20 will hear some excited closing arguments from these
21 talented lawyers. And then the case will be yours,
22 at long last.

23 So thank you for your careful attention
24 these past two weeks. I'm giving you the afternoon
25 off, but that doesn't mean you have to tell your

1 family or your employers, right? Go do what you
2 want to do.

3 So thank you for your careful attention.
4 Same instructions, though. Because until I say, Go
5 deliberate, then you can't talk to each other about
6 the case. You can talk to each, just not about the
7 case. You can't talk to anyone else. And don't do
8 any research on the case. All rise for the jury.

9 (The jurors exited the courtroom.)

10 THE COURT: Okay. Y'all can be seated.

11 I'm probably going to let us take a break
12 before we launch into the formal charge conference.
13 But let me ask, does everyone want to renew their
14 directed verdict motions? I know we didn't hear
15 really any evidence since we just talked about the
16 most recent ones. But does everyone want to renew
17 their directed verdict motions for posterity?

18 MR. McKEEBY: Yes, your Honor.

19 MR. GREENFIELD: Yes.

20 MR. GILLIAM: Yes.

21 THE COURT: Yes, yes, yes. Okay. I have
22 heard your renewed motions. I'm rejecting all of
23 them, without saying why still again. So that
24 ruling is on the record, so you preserved your
25 error.

1 So let's take a 10-minute break. Y'all
2 can get reset, and then we will come back in and
3 talk about the formal charge. I think we have got
4 electronic copies in your hands. And then we will
5 see what we can get through on the charge this
6 afternoon.

7 Court is in a 10-minute recess. We will
8 see y'all at 2:20.

9 THE COURT SECURITY OFFICER: All rise.
10 (Recess.)

11 THE COURT SECURITY OFFICER: All rise.

12 THE COURT: Thank you.

13 You can be seated.

14 Okay. We are back on the record, maybe
15 let's refresh our appearances because we are outside
16 the jury's presence at a formal charge conference.

17 So let's go for it, Mr. Gilliam.

18 MR. GILLIAM: For plaintiff Charlene
19 Carter, Matthew Gilliam, Matt Hill, and Bobby Pryor.

20 MR. McKEEBY: For Southwest Airlines,
21 Paulo McKeeby and Brian Morris.

22 MR. GREENFIELD: On behalf of TWU Local
23 556, Adam Greenfield and Edward Cloutman, III.

24 THE COURT: Okay. Thank y'all.

25 All right. So we are here at the formal

1 charge conference, sent the jury home for the day
2 and then y'all have my latest draft of the jury
3 charge and the jury questions.

4 So what I want to do is, basically, we
5 will go through this a section at a time this time.
6 And I'm just going to ask if anyone has any problems
7 with any section. And then we will address those
8 before I move on to the next section. As soon as my
9 computer decides to pull up the behemoth charge, I
10 will be ready to go.

11 Okay. So I have got it up. So we've got
12 jury instructions, a standard opening on pages 1 and
13 2.

14 Does anyone have any issues with pages 1
15 and 2?

16 MR. GREENFIELD: I'm sorry. You have the
17 jury instructions first?

18 THE COURT: Uh-huh.

19 MR. GREENFIELD: I'm sorry, I don't know
20 if I --

21 THE COURT: So pages 1 and 2, anyone --
22 any issues with the standard instructions?

23 MR. GREENFIELD: I'm trying to pull it up.
24 My email is not --

25 THE COURT: How about signal to me when

1 you are ready?

2 MR. GREENFIELD: The wheels are spinning.
3 I would be happy if you want to turn it over to see
4 what everyone else has to say to keep moving
5 forward, your Honor. I'm just getting a spinning
6 wheel. Thank you, though.

7 THE COURT: I was earlier, so I feel your
8 pain.

9 MR. GREENFIELD: I think I have got
10 them -- within moments, your Honor. Maybe.

11 I'm ready, your Honor.

12 THE COURT: All righty.

13 Okay. So pages 1 and 2 are standard
14 preliminary instructions.

15 Any issues with regard to those?

16 MR. GILLIAM: None from plaintiff.

17 THE COURT: All right. Any Southwest
18 issues on 1 and 2?

19 MR. MORRIS: No, your Honor.

20 MR. GREENFIELD: No, your Honor.

21 THE COURT: All right.

22 Preponderance of the evidence on page 3,
23 any issues?

24 MR. GILLIAM: None from plaintiff.

25 MR. MORRIS: None from Southwest.

1 MR. GREENFIELD: None, your Honor.

2 THE COURT: Okay. So we are on to
3 evidence, page 3; direct and circumstantial.

4 MR. GILLIAM: No issues from plaintiff.

5 MR. MORRIS: None from Southwest.

6 MR. GREENFIELD: None, your Honor, from
7 the Union.

8 THE COURT: Now we are on to stipulations
9 and the 15 from the pretrial order that I read at
10 the start of trial and incorporated here.

11 Any issues with the stipulation section?

12 MR. GILLIAM: None from plaintiff.

13 MR. MORRIS: None from Southwest.

14 MR. GREENFIELD: None from the Union, your
15 Honor.

16 THE COURT: All right.

17 So we are to the witnesses section on
18 pages 5 and 6.

19 MR. GILLIAM: No issues from plaintiff.

20 MR. MORRIS: None from Southwest.

21 MR. GREENFIELD: None from the Union, your
22 Honor.

23 THE COURT: All right.

24 So then similar acts on 6 and 7?

25 MR. GILLIAM: No issues from plaintiff.

1 MR. MORRIS: Your Honor, Southwest just
2 requests that the limiting instruction that is
3 further down the charge be included here as well.

4 THE COURT: I know the limiting
5 instruction is in here. I'm fine putting it in one
6 place. If you want me to put it in here, I can move
7 it. Putting in it twice, I think, gives it more
8 credence than anything else gets in the charge.

9 MR. MORRIS: I think it is fine where it
10 is.

11 THE COURT: Okay. Any other issues with
12 similar acts?

13 MR. GILLIAM: No other issues from
14 plaintiff.

15 MR. GREENFIELD: None from me, your Honor.

16 THE COURT: Okay. Impeachment by
17 inconsistent statements?

18 MR. GREENFIELD: None from the Union, your
19 Honor.

20 MR. GILLIAM: No issues from the
21 plaintiff.

22 MR. MORRIS: None for Southwest.

23 THE COURT: Okay. Depo testimony on
24 pages 7 and 8?

25 MR. GREENFIELD: No issues from the Union,

1 your Honor.

2 MR. GILLIAM: No issues from the
3 plaintiff.

4 THE COURT: I will flag for y'all, I
5 changed, like, two or three words in here. The
6 pattern says, "Before trial a depo was taken," and
7 Nevarez was not taken before trial. So I just said
8 "some time before the testimony was presented," just
9 to make sure we are technically correct.

10 Are there any issues with that? That is
11 the next-to-the-bottom line on page 7.

12 I just want to give full disclosure on
13 what I was tweaking this morning.

14 MR. MORRIS: No issues from Southwest.

15 MR. GREENFIELD: No, your Honor.

16 And I would just make a request from the
17 Court, if you could kindly point out if there has
18 been any adjustments so I can at least compare if we
19 get to a section.

20 THE COURT: I have no idea. Because I'm
21 one of three people who was changing it in the last
22 24 hours.

23 MR. GREENFIELD: Understood.

24 THE COURT: So I will tell you if I have
25 personal knowledge of things that I changed.

1 MR. GREENFIELD: Thank you.

2 THE COURT: Yes, if you want to make a red
3 line and send it now, that is fine, to the version
4 y'all had last.

5 Okay. So now we are at limiting
6 instructions. Any issue with limiting instructions?

7 MR. GILLIAM: No issues from plaintiff.

8 MR. MORRIS: None from Southwest.

9 MR. GREENFIELD: None for me, your Honor.

10 THE COURT: All right.

11 Inference from filing suit. There is
12 none. Any issue?

13 MR. GILLIAM: No issues from plaintiff.

14 MR. MORRIS: None from Southwest.

15 MR. GREENFIELD: None from the Union, your
16 Honor.

17 THE COURT: Okay. Now, we are into
18 parties claims. Let's talk about Section 8 first.

19 So fair representation against Local 556.

20 Any issues on this one on pages 9, 10, and
21 touching on 11?

22 MR. GILLIAM: Yes, your Honor. We still
23 maintain our objection about the inclusion of
24 language about how the DFR applies during grievance
25 handling. Grievance handling is not a relevant part

1 of Ms. Carter's claims in this case. And we feel
2 that it is confusing to the jury, the claims.

3 So we object to the --

4 MR. GREENFIELD: If I may respond, your
5 Honor.

6 THE COURT: Yes. So let's -- can you zoom
7 in on that sentence? Is it the last sentence of the
8 first full paragraph that we are talking about?

9 MR. GILLIAM: Yes. That is one occurrence
10 of it. It occurs in two places. That is one place.
11 The other is on page 10, and it is the last sentence
12 of the second paragraph.

13 THE COURT: Okay.
14 Response?

15 MR. GREENFIELD: Yes, your Honor.

16 I understand that the attorneys are saying
17 that it is not part of their case, but when
18 Ms. Carter was on the stand, she waffled a couple
19 times back and forth, but did say at one point that
20 she did say the representation was a breach.

21 THE COURT: In the Step 2?

22 MR. GREENFIELD: Yes, ma'am -- yes, sir.

23 THE COURT: Yes. I recalled that, too.
24 So I know y'all have been consistent, but I thought
25 there --

1 MR. GILLIAM: We argued it, so I --

2 THE COURT: -- agreed.

3 But -- so I wasn't also asked to
4 judiciously estop her and strike her.

5 So because of that, I think I have got to
6 have the language in for clarity of picture from
7 what the jury heard, if that makes sense.

8 That is at least my view sitting here
9 after hearing that testimony. So my recollection
10 was consistent with Mr. Greenfield's.

11 MR. GILLIAM: Okay. And.

12 A question for your Honor, for any
13 instance where, I guess, we do have an objection to
14 some of these instructions on claims, it is my
15 understanding that we need to file, to get something
16 on the record, maybe, you know, a version that, you
17 know, we would not -- that we would not object to in
18 order to preserve our objection.

19 THE COURT: So yes, with an asterisk. I
20 guess what I'm concerned about is not about language
21 that you would like cut out. You can just tell me.

22 And that is why I asked you to point out
23 the specific sentences you are talking about. So
24 right now you have preserved error that those two
25 sentences, and the spots that you identified are in

1 and shouldn't be, in your view.

2 My greater concern was -- and this
3 probably is evaporating, given the timing that we
4 are having this charge conference at. If the jury
5 were back out there, and you said, Hey, I have got a
6 20-page instruction on my preferred way to handle my
7 claims, and now we are worried about the jury's
8 timing being back there, I would ask you to file
9 that, reference it in this proceeding. And that way
10 we don't have to have you read it all.

11 So here I have no problem, if you read
12 it -- now that the jury is not waiting on us, I
13 don't have a problem with you reading what you think
14 is substantially correct. But if it is an omission
15 that we are talking about like right here, you can
16 just say, Omit X, Starr, because it shouldn't be in
17 there.

18 And if there is something larger that you
19 want in that I'm not putting in, we need to get it
20 in, in some way. Either you read it into the record
21 here or you file it and reference it by
22 incorporation.

23 Does that make sense?

24 MR. GILLIAM: I think so.

25 So you mentioned a notation saying "omit."

1 Do we file something with some kind of
2 notation like that?

3 THE COURT: No. So as long as it is in
4 the record, that is what matters, right? And so the
5 normal way of handling this is all verbally on the
6 record.

7 If we have somebody say, I would like a
8 different jury question that is 30 pages long, it is
9 going to take 30 minutes to read that into the
10 record. I was concerned about them waiting back
11 there for 30 minutes. When you could just file it,
12 refer to it in this proceeding that you are filing,
13 and then it is preserved.

14 So my preference would be, now that we are
15 not waiting on them, whatever you have got that you
16 want in that I'm keeping out, read it into the
17 record.

18 But if it really is like 30 or 40 minutes
19 worth, or more than that, then we can think about
20 whether or not we should file it.

21 So it is content you are wanting in that
22 is lengthy that would bore us all to tears that I'm
23 letting you file in reference to it in this hearing.
24 But you should still reference it in this hearing,
25 right? I don't want you going and filing something

1 at midnight saying, This was my preferred charge.
2 That is not a proper way of handling it.

3 MR. GILLIAM: Okay.

4 We just had concerns about preserving the
5 issue. And I think we were under the impression
6 that we would have to file -- that we would have to
7 put something in writing.

8 THE COURT: You don't have to put
9 something in writing to preserve it. You can put it
10 in at this hearing to preserve it.

11 Now, you need something at this hearing to
12 preserve it, even if this hearing references
13 something you are filing on the docket right now or
14 an hour from now, that incorporates it by reference.

15 Does that make sense? But you have got to
16 bring it up at this hearing.

17 If you bring it up on the docket tonight
18 and there is no reference in this hearing to it,
19 then it is not preserved at the formal charge
20 conference.

21 All right. So if you have a question on a
22 particular thing you are wondering about, let me
23 know, because I don't just have to give you
24 generalized, we can talk through it specifically.

25 But on the ones you just told me, the two

1 sentences that shouldn't be there, in your view, I'm
2 overruling your objection. Your objection is
3 perfectly clear on the record on what documents they
4 are.

5 Now, I will say, one thing I should do --
6 because I only emailed this to y'all and did not
7 send it, I'm going to read these two sentences into
8 the record because I think a reference to an email
9 is not enough. It has got to be a reference to a
10 file document or something read into the record,
11 right? So I caught myself there.

12 So I think your two sentences that you are
13 objecting to, Mr. Gilliam, are, this is especially
14 true when a union is handling a grievance based upon
15 a termination, the industrial equivalent of capital
16 punishment, is that one of the sentences you are
17 objecting to?

18 MR. GILLIAM: Yes, your Honor.

19 THE COURT: Okay. I will overrule that
20 one.

21 And then the other sentence you are
22 objecting to is, plaintiff Carter can also prove a
23 breach of duty by the Union by showing that the
24 Union was arbitrarily ignoring a meritorious
25 grievance or processing it in a perfunctory fashion.

1 That's the other one you are objecting to?

2 MR. GILLIAM: That's the other one, your
3 Honor.

4 THE COURT: Okay. I will overrule that
5 objection as well, based on the evidence that I
6 believe we heard.

7 Okay. So other questions on this section
8 A, fair representation against the Union?

9 MR. GREENFIELD: Yes, your Honor.

10 If we go down to the paragraph that
11 starts, "A union is liable for all acts."

12 THE COURT: I'm there.

13 MR. GREENFIELD: I think the charge sets
14 out kind of what a union is liable for, and how a
15 union violates the DFR.

16 We would just reiterate the language we
17 asked for in our formal -- or in our informal charge
18 conference. At the end of footnote 4, we believe it
19 would be important to include, "However, a union
20 official does not lose their federally-protected
21 rights as an employee by becoming an official with
22 the Union. As such, Defendant Southwest Airlines
23 owes the same duty to the Union and as officials as
24 any other Southwest employees."

25 THE COURT: Understood.

1 Thank you for reading it in. I will
2 reject that. But that was perfect in reading it in.
3 So you have preserved your argument.

4 MR. GREENFIELD: The next issue I have,
5 your Honor.

6 THE COURT: Yes, sir.

7 MR. GREENFIELD: If we go down to, "The
8 law presumes."

9 THE COURT: I'm there.

10 MR. GREENFIELD: "Breaches its duty when
11 it causes the discharge of an employee."

12 THE COURT: Yes, sir.

13 MR. GREENFIELD: I believe that is a
14 misstatement of the law. The law, if applied to
15 conduct of individuals rather than actions of the
16 executive board, creating such a presumption
17 elevates the federal rights of some employees above
18 those of others, and I think that is improper.

19 THE COURT: All right. Would you omit or
20 reform that statement?

21 MR. GREENFIELD: I would take that out.

22 THE COURT: Okay.

23 MR. GREENFIELD: Omit it.

24 THE COURT: Understood.

25 I will overrule that.

1 MR. GILLIAM: And, your Honor, I also have
2 an objection with that statement as well.

3 THE COURT: Okay. Go for it.

4 MR. GILLIAM: It currently says, "The law
5 presumes a union breaches its duty when it causes
6 the discharge of an employee." The second sentence
7 says, "If a union caused the discharge of an
8 employee."

9 We believe that it should say the law
10 presumes union breaches its duty when it causes or
11 attempts to cause the discharge of an employee.

12 THE COURT: Causes or attempts to cause.
13 Do you have a citation for authority for attempts to
14 cause?

15 MR. GILLIAM: I believe the In Re Graphics
16 case, or Acklin, one of the two states it. If not,
17 maybe the Caravan Knight case. I know we have cited
18 it before. I don't have the citation off the top of
19 my head. We've often cited those together.

20 THE COURT: Understood.

21 So what I will do is, I will overrule it
22 for now. I will look into it, because I reserve the
23 right before charging the jury to change my mind,
24 but I will look at your cases. But I'm going to
25 overrule it at this point.

1 MR. GILLIAM: Well, one of the cases does
2 say "cause," but I believe one of the others says
3 "attempts to cause."

4 THE COURT: Okay. I'm overruling it at
5 this point and I reserve the right change my mind.
6 Other issues with this section?

7 MR. GREENFIELD: The Union has no
8 additional objections to section A, your Honor.

9 THE COURT: All right.

10 MR. GILLIAM: No others to section A from
11 plaintiff.

12 THE COURT: Okay. B is RLA retaliation
13 claim against Southwest and 556.

14 So who wants to raise an objection to this
15 section?

16 MR. MORRIS: Your Honor, Southwest would
17 request that the second sentence, The act forbids
18 any limitation, et cetera, et cetera. That
19 statement is from the section on the purpose of the
20 RLA. It doesn't impose any free-standing legal
21 obligations on the parties. And we think it is
22 inappropriate to instruct the jury as to the purpose
23 of a statute. That is for the Court's use perhaps,
24 but we think it is improper for the jury.

25 THE COURT: Any thoughts from any other

1 side? Any objection to me taking it out?

2 MR. GILLIAM: We think it is proper to
3 include the language of the statute there.

4 MR. MORRIS: Your Honor, if I could one
5 thing. It says, "The act forbids." The section
6 actually says, "the act is intended to forbid."
7 This is saying it actually forbids something. I
8 just think that is not accurate, as well as just
9 inappropriate.

10 THE COURT: Understood.

11 So what I will do on this is, I'm going to
12 overrule this one for now. I'm going to take a look
13 at it as well.

14 And what I will do is, if I make any
15 changes later on today, I'm going to send y'all a
16 red line from what I tell you I'm doing at the
17 formal charge conference, if that makes sense.

18 Okay. Other questions?

19 MR. GILLIAM: Yes, your Honor.

20 For plaintiffs, on -- I guess starting
21 with page 13. Let's see, the first full paragraph
22 that starts with, To prove.

23 THE COURT: I'm there.

24 MR. GILLIAM: And the third element says
25 that plaintiff Carter's protective activity played a

1 substantial or motivating factor.

2 I think played should be --

3 MR. GREENFIELD: And I'm sorry, Matthew.

4 I'm not there. I'm trying to track.

5 MR. GILLIAM: Oh, sorry.

6 MR. GREENFIELD: On page 13, you said?

7 MR. GILLIAM: Page 13, the first full

8 paragraph that starts with --

9 MR. GREENFIELD: To prove.

10 MR. GILLIAM: -- to prove.

11 MR. GREENFIELD: Thank you.

12 MR. GILLIAM: And then the third element.

13 MR. GREENFIELD: My apologies. Thank you.

14 MR. GILLIAM: No problem.

15 It says that plaintiff Carter -- plaintiff
16 Carter's protected activity played a substantial and
17 motivating factor.

18 We would just strike "played" and include
19 "was." The concern is that "played" may confuse
20 what the motivating factor analysis actually is.

21 THE COURT: Okay. "Played" to "was."

22 Any issues with changing played to was?

23 MR. MORRIS: Your Honor, I think that
24 is -- that's fine.

25 MR. GREENFIELD: Yes, your Honor.

1 THE COURT: It saves several letters,
2 which, in the grand scheme of things, we could make
3 that change throughout.

4 MR. GILLIAM: I hate to seem like I'm
5 quibbling, but I did have a concern about it.

6 THE COURT: Understood.

7 No, I -- okay. So I have made that change
8 from "played" to "was."

9 I will note, now that I'm making changes,
10 my pagination is changing a little bit, so it may
11 take me a little bit to catch up to where y'all are
12 at.

13 Okay. So I made that change from changing
14 "played" to "was."

15 Other issues with this section?

16 MR. GILLIAM: I still have a couple.

17 The other is we think there should be a
18 paragraph included to define what "substantial and
19 motivating factor" means.

20 We would -- we would amend it to read,
21 "substantial and motivating factor means any factor
22 that motivated or in any way contributed to
23 Southwest's decision to fire Carter or Local 556's
24 decision to report Carter."

25 And further include language that says

1 "even if other factors also motivated the decision."

2 THE COURT: Okay. So thoughts on that
3 language, on defining "substantial and motivating
4 factor"?

5 MR. MORRIS: We object to that inclusion.
6 We think it is clear as it is; long enough as it is.

7 THE COURT: Understood.

8 Any Union position?

9 MR. GREENFIELD: Same here.

10 THE COURT: Okay. So I'm going to reject
11 that inclusion, but you have preserved it.

12 MR. MORRIS: Your Honor, I have another
13 thought. I don't know if anybody else wants to jump
14 in.

15 THE COURT: You may as well, Mr. Morris.

16 MR. MORRIS: In the first sentence after
17 the Court quotes section 152.4. It says, "Plaintiff
18 Carter claims Southwest retaliated against her by
19 firing her for engaging in union-opposition-and-
20 organizational activity."

21 I think it is best not to characterize the
22 claim there, at the risk of being either inaccurate
23 or under or over inclusive, and just say "Carter
24 claims Southwest retaliated against her by firing
25 her for engaging in activity protected by the

1 RLA" -- or protected by section -- sorry -- I'm just
2 trying to word it properly.

3 So if we just took out "in opposition,
4 union-opposition-and-organizational activity." I
5 think that would address it.

6 THE COURT: So you suggest taking out the
7 words connected by the hyphens,
8 union-opposition-and-organizational?

9 MR. MORRIS: Correct.

10 THE COURT: I don't have an issue with
11 taking out "union opposition" and organizational
12 modifier to activity.

13 MR. GILLIAM: We do, your Honor. I think
14 that it makes it clear what -- what exact activity
15 we are talking about for the purpose of the RLA
16 claims so that, you know, the jurors don't have to
17 be lawyers and understand what it is precisely that
18 152, Third and Fourth protect and what is at issue
19 in this case.

20 THE COURT: Understood.

21 Any Union position on that phrase coming
22 out or staying in?

23 MR. GREENFIELD: I'm not sure, your Honor.
24 I'm trying to keep up. I'm on a different section.

25 THE COURT: I hear you.

1 MR. GREENFIELD: Specifically, what are we
2 talking about? I apologize.

3 THE COURT: So under the block quote that
4 I have now on my page 12 -- which is different than
5 y'all's page 12 --

6 MR. GREENFIELD: Okay. All right.

7 THE COURT: -- that quotes section 152.4,
8 there is a first full sentence that says, "Plaintiff
9 Carter claims that Defendant Southwest."

10 Tell me when you are at that sentence.

11 MR. GREENFIELD: Yes, I'm there.

12 THE COURT: Okay. There is a long
13 hyphenated phrase, union-opposition-and-
14 organizational, that Southwest would like out that
15 Carter wants to keep in.

16 MR. GREENFIELD: And I'm sorry, I didn't
17 hear what Southwest -- did Southwest have a
18 proposition that they wanted?

19 THE COURT: They prefer to either cut it
20 or cut it and change the wording of, "by section
21 152, Third and Fourth," to, "by the RLA."

22 MR. GREENFIELD: I'm fine either way, your
23 Honor.

24 THE COURT: Okay. I'm going to keep it in
25 for now. I know it adds length, but it is clarity,

1 so I think it serves some purpose. So I will
2 overrule the objection and keep it in.

3 What is the next objection to this
4 section?

5 MR. GILLIAM: For plaintiff, your Honor,
6 paragraph 15 -- I'm sorry -- page 15. I think it is
7 still page 15. I'm using the old version for
8 guidance on pages.

9 THE COURT: Okay. But now you are in a
10 new section, though, right?

11 MR. GILLIAM: Am I?

12 MR. GREENFIELD: Fifteen would take us
13 into C --

14 THE COURT: It would take us somewhere
15 into the C territory.

16 MR. GILLIAM: Okay. I'm sorry. We are in
17 B.

18 MR. GREENFIELD: So, Matthew, what
19 happened is and why I lost you earlier is, I believe
20 the Court cut the language about it being a -- the
21 matter of law question, and so that kind of skewed
22 our pages from your pages.

23 MR. GILLIAM: Oh.

24 THE COURT: Yes, it did.

25 MR. GILLIAM: Okay. Sorry about that.

1 With that mind, so it is the last
2 paragraph of paragraph B -- paragraph B, right
3 before C.

4 THE COURT: Okay. So the last full
5 paragraph of B, if you decide that Defendant
6 Southwest, is that correct?

7 MR. GILLIAM: Yes. And we believe that
8 whole paragraph should be stricken for the -- for
9 all of the reasons we have previously argued.

10 There is no -- we have argued there is no
11 legitimate, non-discriminatory reason. There is --
12 you know, Southwest and Local 556 reported
13 Ms. Carter's messages and posts under the social
14 media policies, and that either was a discriminatory
15 reason or it was not a discriminatory reason. And
16 the affirmative defense is meant to provide for a
17 non-discriminatory reason.

18 So it is -- the social media policies, as
19 a defense, shouldn't get two bites at the apple.
20 And it nullifies the RLA's protections to include
21 this paragraph in here. It nullifies the whole
22 protection for the activities that Ms. Carter
23 engaged it.

24 THE COURT: Understood.

25 So I will project your request for the

1 same reasons I overruled the directed verdict motion
2 which is -- shhhhh.

3 I'm joking. But I never say why, right?
4 So I'm not going to say why now.

5 I don't want shape y'all's closing
6 arguments, right? I don't want to tell you what I'm
7 thinking of that is important to me, which may be
8 totally different than what is important to them.

9 So, you know, I have my own reasons, but I
10 have found that in the past, they usually don't
11 matter if I tell you, because they pull you off of
12 the jury's trail and on to my trail, which is just
13 irrelevant.

14 So I understand your request to remove
15 that paragraph, but I will overrule it.

16 Other objections for section B?

17 MR. GREENFIELD: Yes, your Honor, from the
18 Union. If we look at section 13 -- or page 13, the
19 second paragraph from the bottom that says, "All
20 union-oppositional-and-organizational activity."

21 THE COURT: I'm there.

22 MR. GREENFIELD: Okay. We would seek, as
23 we requested in the informal conference, different
24 case law language. We have provided the case of
25 Held v. American Airlines, Lesser Construction, LLC

1 and Daimler Chrysler Corp.

2 We believe a more proper instruction would
3 be under section 152, Third and Fourth, but can lose
4 protection, if the communication is vulgar,
5 offensive, abusive, or harassing under Held.

6 Special circumstances can also cause the
7 speech to lose protection under Lesser Construction.
8 Such circumstances include situations in which the
9 otherwise-protected activity is vulgar or obscene
10 and may exacerbate employee tensions. Also from
11 Lesser Construction.

12 And then continuing on, if you find
13 plaintiff Carter's messages to Ms. Stone to be
14 indefensible or abusive, the protection is forfeited
15 under Daimler Chrysler in the NLRB case.

16 THE COURT: Understood.

17 So I will say I think this is sort of the
18 core issue with the charge, right? Getting down to
19 what is -- what is the categories of protected
20 conduct under the RLA.

21 And I'm not going to speak too much on
22 this because then I'm getting away from my general
23 principle of not trying to throw y'all off of the
24 jury's trail and tell you what I think is important.

25 But based on this, I can't find a Supreme

1 Court case or a Fifth Circuit case using that
2 language in the Railway Labor Act. Absolutely any
3 National Labor Relations Act, what I ingrafted in.
4 I know under Konop, they had a question in a
5 footnote where they said they might, looking at a
6 Fifth Circuit National Labor Relations Act case.

7 I don't see a basis to ingraft it from a
8 National Labor Relations Act over to a Railway Labor
9 Act, unless it is necessary.

10 And from what I can tell, the reason
11 Congress used different language is, the NLRA was
12 really talking about context where you might have a
13 union, and the RLA was talking about context where
14 you will have a union.

15 So I think it is basically making it as if
16 it is the Government, right? The Government saying
17 you will have a union in these transportation
18 contexts. And as a result of that, it is almost
19 like you are speaking to your Government.

20 So what protected speech do you have?
21 Well, you can't say knowingly false things about
22 Government officials and you can't threaten your
23 Government officials.

24 But that separate category we find in the
25 National Labor Relations Act where you might have a

1 union, that level of additional protection is not
2 there against where you will have a union just like
3 it is not there where you will have your Government.

4 So that is my view from the best I can
5 extrapolate as to why the two laws are worded
6 differently and why I don't have a Supreme Court
7 case or a Fifth Circuit case telling me I need this
8 third category.

9 So that is a long way of saying I will
10 reject that request, but I appreciate you reading
11 the language into the record for us.

12 MR. GREENFIELD: Yes, your Honor.

13 Thank you.

14 MR. MORRIS: Your Honor, we have the
15 same -- although I was going to identify certain
16 other categories of speech that lose protection.

17 THE COURT: You should. So let's have you
18 read your preferred language into the record,
19 Mr. Morris.

20 MR. MORRIS: Sure. Just give me one
21 second. I'm just trying to get it right here.

22 THE COURT: Yes.

23 MR. MORRIS: So I guess it would be,
24 "unless it is flagrant, violent, extreme, egregious,
25 inappropriate, offensive, obscene, harassing,

1 intimidating, or hostile."

2 THE COURT: Understood.

3 So I'll overrule that one for the same
4 reasons I overruled the Union's request for similar
5 language in section B.

6 Okay. Other issues with section B?

7 MR. GREENFIELD: Yes. I think I have one
8 more, your Honor. I'm just trying to be clear on
9 where it is.

10 Yes. If we go down to the -- if you --
11 the very last paragraph in section B, If you decide
12 that Defendant Southwest and/or Defendant Local 556.

13 THE COURT: Yes.

14 MR. GREENFIELD: If you scroll down a few
15 sentences, it gets to the section that goes section
16 152, Third and/or Fourth.

17 THE COURT: Yes.

18 MR. GREENFIELD: So it says, "The
19 Defendants assert that Plaintiff Carter would have
20 been discharged even if she had not engaged in
21 activity protected by section 152, Third and/or
22 Fourth."

23 We would seek additional language that
24 says, at the end of Fourth, "and/or that even if her
25 messages to Ms. Stone contained protected

1 expression, they also constituted harassment that
2 violated Southwest Airlines' employee conduct
3 policies and implicated Stone's federally-protected
4 rights."

5 THE COURT: Understood.

6 I will reject that request.

7 Okay. Other issues with section B?

8 It sounds like we should move to C-1.

9 So C-1 is Carter's discharge claim against
10 Southwest and 556.

11 So on my version, it is starting on
12 page 14, and runs to the top of 16.

13 Who has an issue with section C-1?

14 MR. GREENFIELD: The Union, your Honor.

15 And correct me if I'm wrong on this -- and I
16 apologize, I had some help on this briefing.

17 But we object to it on the basis that we
18 would propose the adoption of the pattern jury
19 charge for claims of religious discrimination under
20 Title VII as presented by the Fifth Circuit.

21 THE COURT: Understood.

22 And anyone else have thoughts on sticking
23 to the patterns?

24 So my recollection was the patterns
25 preferred some tailoring to the case, so I think

1 that is what we tried to accomplish in as neutral of
2 a way as possible.

3 MR. GILLIAM: Yes, your Honor. Just, I
4 think that in this case, the -- these instructions
5 more closely follow Abercrombie and Fitch, which I
6 think benefits this case.

7 THE COURT: All right. And I know I
8 haven't gone all of the way with you on Abercrombie
9 and what your view is, Abercrombie to this case, but
10 there is some part of it I have come along with you
11 on.

12 Okay. So I have a request in for sticking
13 solely to the patterns. I'm going to overrule that
14 request.

15 What other issues are there with C-1?

16 MR. GILLIAM: Let's see. I'm probably a
17 little messed up on my pages here.

18 There is a paragraph with the elements, I
19 guess for both Southwest and Local 556. And the
20 elements basically say that either Southwest --
21 Southwest's discharge of Plaintiff Charter was
22 motivated by her sincerely-held religious
23 observance, beliefs, or practices.

24 And then the corresponding one for Local
25 556 says that Local 556's decision to report Carter

1 to Southwest was motivated by Carter's
2 sincerely-held religious observance, beliefs, or
3 practices.

4 Our objection there would be that it
5 should more clearly state that Ms. Carter's
6 sincerely-held religious observance, beliefs or
7 practices were a motivating factor.

8 Concern with the way it is currently
9 phrased is that it would maybe lead the jury to
10 believe that the standard is a lot higher than it
11 is.

12 In fact --

13 THE COURT: It looks more like but-for
14 language based on how we frame it?

15 MR. GILLIAM: Yes. And I think -- I do --
16 I would like to state for the record that Ms. Carter
17 could also prove because of in this instance,
18 through a but-for cause analysis, the motivating
19 factor analysis is probably more appropriate.

20 I think she has either option, she could
21 prove her case through either the motivating factor
22 analysis or a but-for cause analysis.

23 And, again, to more clearly represent that
24 element, or more accurately represent the case law,
25 it should be worded to say that -- just so it is

1 clear for the record -- that Defendant Southwest's
2 discharge of Plaintiff Carter -- I'm sorry -- that
3 Plaintiff Carter's sincerely-held religious
4 observances, beliefs, or practices was a motivating
5 factor for Defendant Southwest's decision to
6 discharge Carter.

7 And then the corresponding one for the
8 Union should say that Carter's sincerely-held
9 religious observance, beliefs, or practices was a
10 motivating factor to Local 556's decision to report
11 Carter.

12 THE REPORTER: Could you say that again?
13 It was garbled.

14 MR. GILLIAM: Sure.

15 That Local 556's decision to -- I'm
16 sorry -- that Carter's sincerely-held religious
17 observances, beliefs, or practices was a motivating
18 factor for Local 556's decision to report Carter.

19 I'm starting to lose my voice. I
20 apologize.

21 THE COURT: I think we all are at this
22 point.

23 MR. MORRIS: Your Honor, I would just note
24 for Southwest, that the "motivated by" language is
25 from the pattern instruction, and we don't see any

1 reason to deviate from that. And relatedly, we
2 think the but-for instruction is the appropriate
3 one.

4 THE COURT: Now, they think they get both
5 motivating factor and but-for, and you think they
6 just get but-for, is that correct?

7 MR. MORRIS: Uh-huh, yes.

8 MR. GILLIAM: That's correct.

9 THE COURT: Okay. Union position on these
10 two arguments?

11 MR. GREENFIELD: No, your Honor. I think
12 the language should read as is.

13 THE COURT: Okay. So I'm going to stick
14 with it as is.

15 So I get your argument that I think
16 patterns might be able to be clearer, but until they
17 clear them up, I think I'm going to stick with the
18 safe harbor in the patterns.

19 I get your point to Abercrombie and Wright
20 Line, that maybe you can get both, but the patterns
21 still are sticking me to one or the other. I
22 haven't seen sufficient clarity from Abercrombie
23 where I think I should really send both against the
24 patterns, but, yes, that may be true.

25 MR. GILLIAM: Bostock v. Clayton County,

1 Georgia addresses it as well.

2 THE COURT: Right. I get that. But I'm
3 not there yet. So my inclination now is to send
4 motivating factor, but not both and not but-for, if
5 that makes sense.

6 So I will note your request, but I am
7 rejecting it.

8 THE COURT: Okay. What else do we have to
9 address in C-1?

10 MR. GILLIAM: The very last paragraph. It
11 starts, "Plaintiff Carter does not have to prove
12 that unlawful discrimination was the only reason" --

13 THE COURT: Uh-huh.

14 MR. GILLIAM: -- "the Defendant Local 556
15 reported her."

16 And I guess there is a corresponding
17 paragraph for Southwest that this would apply to as
18 well.

19 The concern there is that it sort of
20 equates unlawful discrimination, what you are
21 proving, by showing that Ms. Carter's
22 sincerely-held religious beliefs was a motivating
23 factor is instead now -- you are sort of
24 substituting what you have to prove for the -- what
25 is a motivating factor.

1 So phrased the way it currently is, the
2 concern is that the -- it heightens the burden under
3 Title VII's motivating factor test. Because it
4 suggests that unlawful discrimination must be the
5 motivating factor.

6 THE COURT: Okay. What is your suggested
7 alternative?

8 MR. GILLIAM: That -- give me a second.
9 I'm sorry. I lost my place here.

10 Plaintiff Carter does not have to prove
11 that -- let's see.

12 "Plaintiff Carter does not have to prove
13 that her sincerely-held religious beliefs,
14 observances, and practices was the only reason that
15 Defendant Local 556 reported her or that Defendant
16 Southwest fired her," only that it was a reason.

17 And maybe another paragraph that says
18 "Under Title VII's motivating factor test, Carter
19 need only prove that some aspect of her religious
20 observance, beliefs, or practices was a factor in
21 the decision."

22 THE COURT: Understood.

23 I will overrule that request.

24 Other issues with C-1?

25 MR. GREENFIELD: None, your Honor.

1 MR. MORRIS: No further from Southwest.

2 THE COURT: Anything else from Carter on
3 C-1?

4 MR. GILLIAM: I'm trying see if this is
5 the one where -- oh, yes. One other thing in the
6 paragraph relating to Local 556, element 2 of what
7 Ms. Carter has to prove, that Local 556 caused or
8 attempted to cause Carter's discharge by Southwest.

9 THE COURT: Uh-huh.

10 MR. GILLIAM: I think in accordance with
11 the language of the statutory text, it should be
12 that Local 556 caused or attempted to cause
13 Southwest to discriminate against Carter's religious
14 beliefs or practices.

15 MR. GREENFIELD: And I'm sorry, which
16 section are we at? Have we moved to 2? I
17 apologize.

18 MR. GILLIAM: Yes, element 2 of
19 Ms. Carter --

20 MR. GREENFIELD: Section -- I'm sorry,
21 section 2?

22 THE COURT: We are still on C-1.

23 MR. GREENFIELD: Okay. Thank you.

24 MR. GILLIAM: Still on C-1.

25 And the reason being is that it is --

1 certainly in this case, you know, we allege that
2 Ms. Stone and Local 556 attempted to cause
3 Ms. Carter's discharge, but if -- if for whatever
4 reason the jury determined that they weren't trying
5 to cause her actual discharge but were trying to
6 cause just Southwest to treat her differently, to
7 discipline her, that that is still a violation of
8 the law, the statutory text.

9 THE COURT: Okay.

10 So the current version in C-1 for the
11 paragraph that starts with, "To prove unlawful
12 discrimination by Defendant Local 556," we have a
13 second element that currently reads, "That Local 556
14 caused or attempted to cause discrimination against
15 Plaintiff Carter by Defendant Southwest."

16 And you want to put in -- can you say that
17 language one more time?

18 MR. GILLIAM: Oh, wait. Does it use
19 "discrimination" instead of "discharge"?

20 THE COURT: In the current version, yes.
21 Unless I'm on a different --

22 MR. GILLIAM: I apologize. It does.

23 THE COURT: So is that language now
24 sufficient in the newest version of the charge for
25 you?

1 MR. GILLIAM: Yes, your Honor. I'm sorry,
2 I missed that one.

3 THE COURT: I know it is not your exact
4 language, but it is different than the version --

5 MR. GILLIAM: Yes, I apologize. I missed
6 that one, your Honor.

7 THE COURT: Okay. All right.

8 Other issues with C-1?

9 MR. GILLIAM: No other issues from
10 plaintiff. I'm sorry.

11 THE COURT: That is fine. Okay.

12 So we are at C-2 now. For me, that starts
13 at the top of 16.

14 What issues are there with C-2?

15 MR. GREENFIELD: I can start, your Honor,
16 if you would like.

17 THE COURT: You may.

18 MR. GREENFIELD: Just at the end, we would
19 ask for some additional language. The first
20 paragraph, "The Union Local 556 denies Carter's
21 claim."

22 What we would like it to say is the Union
23 Local 556 denies that Audrey Stone was acting in her
24 official capacity when she reported plaintiff Carter
25 to Southwest Airlines or that her reporting was

1 motivated by plaintiff Carter's religion.

2 Again, this ties back to our argument
3 that -- the official capacity issue, I believe is
4 dispositive of every issue, and I think it should be
5 included in every part as we go down.

6 THE COURT: All right. Any thoughts by
7 Carter on that proposed language, to clarify what
8 the Union is arguing in response to this claim?

9 MR. GILLIAM: So it is just what the Union
10 claims?

11 THE COURT: Correct.

12 MR. GILLIAM: Yes. No objection for them
13 to state it.

14 THE COURT: So I think this is the most
15 area where you have freedom to control the words
16 that are in the charge. So give me just one minute,
17 I'm going to write the words you said in from the
18 transcript, put them in and read them back to you,
19 so hold on.

20 Okay. Can you say your proposed language
21 one more time?

22 MR. GREENFIELD: Yes, your Honor.

23 THE COURT: It's the last part of it, I'm
24 trying to make sure I have down.

25 MR. GREENFIELD: "The Union Local 556

1 denies that Audrey Stone was acting in her official
2 capacity when she reported Plaintiff Carter to
3 Southwest Airlines," or, "that her reporting was
4 motivated by Plaintiff Carter's religion."

5 THE COURT: I think we need to say
6 religious -- what is the phrase?

7 MR. GILLIAM: Religious observances,
8 beliefs, and practices.

9 MR. GREENFIELD: No objection to that,
10 your Honor.

11 THE COURT: I think we need to make it
12 disjunctive for this sentence, the practices, not to
13 nerd out too much.

14 MR. GREENFIELD: Don't let your appellate
15 show too much, your Honor.

16 THE COURT: Okay. Instead of reading it
17 back, I'm just going to flash it up on the screen
18 for y'all. I think I can show my screen.

19 Okay. So it is the top paragraph that you
20 are looking at. It's the last sentence of that
21 first full paragraph. So anyone tell me if I have
22 gotten something wrong in that language.

23 And then I think the order of is it
24 observances, practices, or beliefs, to be consistent
25 with the next sentence.

1 MR. GREENFIELD: Yes, your Honor. That
2 looks correct.

3 THE COURT: But then we switch the order
4 in the bottom paragraph to beliefs, observances, or
5 practices, so I guess consistency is out the window
6 at this point, right? As long as we have those
7 three elements, that is what matters.

8 Okay. Any issues elsewhere?

9 MR. GREENFIELD: Yes, in the third
10 paragraph, your Honor.

11 THE COURT: Yes, sir.

12 MS. GREEN: In the elements of .1, it
13 says, "That Defendant Local 556 treated Plaintiff
14 Carter less favorably than other employees."

15 We would like that to be, "That Defendant
16 Local 556 treated Plaintiff Carter less favorably
17 than other similarly-situated non-Christian
18 employees."

19 THE COURT: Response from the Union --
20 sorry, from Carter?

21 MR. GILLIAM: Yes, I don't see how that
22 requirement applies here, how the similarly
23 situated --

24 THE COURT: Yes, I can similarly-situated.
25 I can't see Christian or non-Christian, adding that

1 in.

2 MR. GREENFIELD: Okay. I believe that
3 tracks Title VII language as far as the causation
4 standard, that how you were being treated
5 differently has to be from -- differently from
6 somebody outside of your protected class, her
7 protected class being Christian.

8 So the person who must have been treated
9 more or less favorably needs to be outside of that
10 protected class.

11 THE COURT: Right. But then I'm giving
12 the jury the questions of law after instructing them
13 on what that is. So my instruction might be
14 similarly situated, but if I'm going to go tell them
15 what it is, it would be like me telling them, I find
16 the following is protected activity, right?

17 So if I tell them, Here is her class, then
18 I think I'm really grabbing the things from their
19 province that I'm supposed to instruct them on and
20 have them find.

21 So I can see things similarly situated, I
22 can't see going so far as to define the protected
23 class.

24 So do you have thoughts on whether I say
25 "similarly situated" in between "other" and

1 "employees," Mr. Gilliam?

2 MR. GILLIAM: The problem is the legal
3 definition of similarly situated. And, again, the
4 potential to confuse the jury with that.

5 THE COURT: Yes. I think I will probably
6 leave it, because I think we have got the concept of
7 similarly situated coming into number 2 when we talk
8 about it's her religious beliefs, observances, or
9 practices. So my inclination is to leave it. So I
10 will overrule that request for similarly situated
11 and the religious specification.

12 MR. GREENFIELD: Nothing else from the
13 Union on that section, your Honor.

14 THE COURT: Okay.

15 MR. GILLIAM: Plaintiff has nothing for
16 No. 2.

17 THE COURT: All right. I assume nothing
18 from Southwest on a section that is not about
19 Southwest?

20 MR. MORRIS: Yes, nothing from Southwest.

21 THE COURT: Got it. Okay.

22 The next section is you, Mr. Morris. So
23 failure to accommodate against Southwest as to C-3.

24 So who has got an issue with C-3?

25 MR. GILLIAM: Your Honor, I guess elements

1 1 and 2 of what Ms. Carter has to prove, it -- I
2 guess our objection is to the inclusion of language
3 about conflicting with the job requirement. We
4 think that is sort of inherent with the facts here
5 under Abercrombie.

6 We think that the elements should
7 basically mirror those set forth in the Abercrombie
8 decision that Ms. Carter was fired because of her
9 religion, and that those should be the elements,
10 fired because of religion.

11 Or maybe stated another way, let's see,
12 that -- that -- that Ms. Carter was fired and that
13 Defendant Southwest discharged Carter with the
14 motive of avoiding the need for accommodating a
15 religious belief, observance, or practice.

16 THE COURT: All right. I understand that
17 request. I will reject it.

18 What is the next issue with C-3?

19 MR. MORRIS: Your Honor, I will reiterate
20 what we raised this morning about a violation that
21 occurs prior to the request of the knowledge of the
22 need for an accommodation, and request that in an
23 instruction indicating that if an employee violates
24 a policy before the request or need for an
25 accommodation is known, that there is no obligation

1 to provide an accommodation.

2 THE COURT: I understand that request. I
3 will reject that one as well.

4 MR. MORRIS: I don't know -- if the Union
5 doesn't have another, regarding to the undue
6 hardship defense, that we raised this morning,
7 again, we think the Court's instruction overstates
8 the burden and doesn't include all of the various
9 burdens that could constitute an undue hardship,
10 including but not limited to burden to other
11 employees, potential future harms, it doesn't
12 actually have to be any kind of monetary loss, et
13 cetera.

14 And we provided cases to that effect.

15 So we think this statement of the undue
16 hardship defense is just an overstatement of the
17 law. And then related to that, we think an
18 instruction that an employer does not have an
19 obligation to provide an accommodation that entitles
20 employees to proselytize should be included as well.

21 THE COURT: I understand that. I will
22 reject it because I think the last phrase
23 "disruption of the business" is a sufficient place
24 to put your concepts.

25 MR. MORRIS: I have one more, if nobody

1 else --

2 THE COURT: You may.

3 MR. MORRIS: The instruction that was
4 just -- that was added regarding purporting to
5 define accommodation, I think is not accurate.

6 And I think a more general statement from
7 some of the Fifth Circuit case law stating that an
8 accommodation is one that eliminates the conflict
9 between the religious belief and the employer
10 practice would be appropriate.

11 THE COURT: So what language are you
12 suggesting should go? I'm trying to find which spot
13 you are critiquing.

14 MR. MORRIS: Oh, I apologize.

15 It is the second paragraph at the second
16 sentence.

17 THE COURT: Okay. And you suggest
18 swapping that with?

19 MR. MORRIS: Just one second. I'm trying
20 to formulate that myself.

21 THE COURT: Sure.

22 MR. MORRIS: If we could come back to it.
23 I don't want to hold everybody else up, if that's
24 okay. I can propose some language before we --

25 THE COURT: Sure. That's fine. And I

1 will just say the sentence that you are addressing
2 says "an accommodation means allowing the employee
3 to engage in her religious practice or observance,
4 despite the employer's normal rules to the
5 contrary."

6 And then we can come back to whatever
7 language you want to propose for that.

8 MR. MORRIS: Sure.

9 THE COURT: Any other issues with C-3,
10 Southwest's accommodation?

11 MR. GILLIAM: Yes, your Honor.

12 There is some more language from
13 Abercrombie that we think is important, that the
14 charge should explain to the jury that employers may
15 not fire employees for their religious observance,
16 beliefs, and practices under an otherwise neutral
17 policy. And that Title VII requires an otherwise
18 neutral policies to give way to the need for an
19 accommodation.

20 THE COURT: Right. I understand that
21 request. I will reject that at this point.

22 MR. GILLIAM: And one more in that same
23 vein is that we think the charge should inform the
24 jury that Title VII imposes an affirmative
25 obligation on employers not to fire an employee

1 because of some aspect of her religious observances,
2 beliefs, or practices.

3 THE COURT: All right. I will reject that
4 one as well.

5 Any other issues on C-3 other than the one
6 I'm putting a pin on for Southwest?

7 MR. GILLIAM: Well, one more, and I
8 suspect I understand where your position is on this,
9 but for the record, just that the Court should also,
10 for the same reasons as stated with the other
11 Abercrombie language, is that the jury charge should
12 exclude the instruction that an employer may
13 terminate an employee for other reasons, good or
14 bad, fair or unfair.

15 THE COURT: Where is that language?

16 MR. GILLIAM: You know what, that may have
17 just appeared in one. Yes, that just appears in
18 one, subsection one.

19 THE COURT: It is not in C-3. Got it.

20 Okay. Any other issues on C-3?

21 All right. C-4 is where we are at now,
22 and that is accommodation against the Union.

23 MR. GILLIAM: For, I guess, all of our
24 requests that we made for C-3, we would also
25 reiterate for C-4 as well.

1 THE COURT: I appreciate that. I will
2 overrule those requests at this time.

3 MR. GILLIAM: Maybe some -- I guess also
4 we would add some parallel language, like you find
5 in C-3, that attempting to cause the employee to
6 discriminate -- and I'm sorry -- the employer to
7 discriminate in these circumstances would be
8 synonymous with refusing to accommodate an
9 employee's religious observances, beliefs, and
10 practices.

11 THE COURT: All right. I see your
12 request. I will overrule that.

13 MR. GILLIAM: Okay.

14 MR. GREENFIELD: The Union has nothing to
15 request on that section.

16 THE COURT: On 4?

17 Mr. Morris, you don't have any language
18 handy yet on C-3, do you? Before we get to damages?

19 MR. MORRIS: Let's move on to damages. I
20 will get you that.

21 THE COURT: That is fine.

22 Okay. Damages is on my page 19.

23 So what issues do we have on a first
24 section on damages before we get to actual damages?

25 MR. GREENFIELD: Nothing from the Union,

1 your Honor.

2 MR. GILLIAM: Nothing from plaintiff, your
3 Honor.

4 MR. MORRIS: Nothing from Southwest.

5 THE COURT: All right.

6 How about the actual damages, small
7 paragraph?

8 MR. GILLIAM: Nothing from plaintiff.

9 MR. GREENFIELD: None from the Union.

10 Your Honor, the word "Charlene" was taken out of one
11 of the -- out of the draft and it threw off my --

12 THE COURT: Pagination? Sorry. One word
13 can cause a big headache when it comes to page
14 numbers.

15 Okay. Anything from Southwest on actual
16 damages?

17 MR. MORRIS: No, your Honor.

18 THE COURT: Okay. How about back pay?

19 MR. GILLIAM: Nothing from plaintiff, your
20 Honor.

21 MR. MORRIS: Your Honor, from Southwest, I
22 don't think there is anything in the record
23 regarding all of these various categories of damages
24 that have been identified here. It is certainly
25 nothing as to the amounts.

1 So we don't think it is appropriate to
2 instruct the jury as to items -- you know, tax
3 relief shared with employees, for example, that are
4 not even in the record.

5 THE COURT: Understood.

6 Are there things in that category that we
7 do remember being discussed? Like, if we are going
8 to narrow down, what would we narrow it down to?

9 MR. MORRIS: The only thing that from I
10 recall from the record is health insurance.

11 MR. GILLIAM: Seniority rights and
12 benefits were discussed.

13 MR. MORRIS: Is that monetized -- I don't
14 know if that's a monetized one. I don't know if
15 there is anything in the record about the amounts.

16 MR. GILLIAM: I think we said insurance,
17 right?

18 THE COURT: Yes, health insurance was
19 definitely in there.

20 I don't recall a monetary figure going on
21 seniority benefits.

22 MR. GILLIAM: I don't know if you got
23 that, your Honor, the jury can value that.

24 THE COURT: So, yes, and my inclination is
25 to put it in, even if it wasn't monetized. But if

1 we are talking about all benefits, we talked about
2 health insurance and seniority benefits.

3 MR. GILLIAM: Yes, your Honor.

4 THE COURT: Okay. So I'm going to mark
5 this up a little bit. I'm going to say, "And such
6 benefits as health insurance and seniority
7 benefits."

8 MR. MORRIS: That is good with Southwest.

9 MR. GREENFIELD: And, your Honor, just on
10 back pay, one last issue. After the first sentence,
11 just perhaps to avoid any confusion about what that
12 time period is, just to conclude what Carter would
13 have earned had she remained an employee of
14 Defendant Southwest from the time of her termination
15 through the time of trial.

16 I believe that is how back pay is defined.

17 THE COURT: Any issues with the time
18 frame?

19 MR. GILLIAM: What was the time frame?

20 THE COURT: Termination through trial.

21 MR. GILLIAM: For back pay? Well --

22 THE COURT: I think we have an instruction
23 up here, if you wouldn't mind, at the end of 19, we
24 say that you should consider the following elements
25 of actual damages, the amount of back pay is, what

1 she would have earned had she not been terminated
2 from her employment from March 14th to the date of
3 the verdict.

4 So I think we defined it up top.

5 MR. GREENFIELD: Right.

6 I just missed that.

7 THE COURT: No. And that's right, it
8 needs to be in there. I just want to make sure it
9 is close enough where they can link back and see it.

10 Other issues on back pay?

11 Punitive damages are next.

12 Issues on the punitive language? It is a
13 long section.

14 MR. GREENFIELD: Yes, your Honor. In
15 regard to elements that are laid out, "you may award
16 punitive damages," we would object that it misstates
17 the law. No member of 556 could meet the punitive
18 damages requirement of an individual acting in a
19 managerial capacity.

20 Plainly, "managerial capacity" refers to
21 the members of Southwest Airlines' management. But
22 even if union officials were analogized to
23 managers -- analogized, excuse me -- Plaintiff
24 Carter was not a member of 556 and submitted to no
25 managerial authority that the executive board may be

1 interpreted to have. I don't believe that punitive
2 damages apply.

3 THE COURT: Understood.

4 What is the response, Mr. Gilliam, to the
5 Union's structure on the punitives argument?

6 MR. GILLIAM: Yes. I mean, managerial
7 capacity is more of a term of art. And I think that
8 President Stone was certainly acting in a managerial
9 capacity, so the instruction is appropriate.

10 THE COURT: So I'm going to leave it in at
11 this time. This is the kind of thing where if it
12 does get awarded, then I would expect a more robust,
13 post-trial briefing on what the legal standard is
14 and then what evidence came into play, if that makes
15 sense.

16 But at this time, I don't think I'm going
17 to pull it out of the jury's purview based on what I
18 have seen.

19 Other issues on punitive damages?

20 MR. MORRIS: Yes, your Honor. I have one.
21 On the -- I don't know, it is pretty far
22 down.

23 In determining whether -- hold on --
24 Defendant Southwest or Local 556 made a good faith
25 effort to prevent discrimination, that paragraph, on

1 the fourth line, it refers to how or whether they
2 responded to Plaintiff Charlene Carter's complaint
3 of discrimination.

4 THE COURT: Can you identify the paragraph
5 right quick? I'm still --

6 MR. MORRIS: Sure. Yes. It is one -- it
7 is the sixth paragraph.

8 THE COURT: Okay. With the last two words
9 of that paragraph being "of discrimination"?

10 MR. MORRIS: Yes.

11 THE COURT: Okay. I'm there.

12 MR. MORRIS: The reference to the
13 considerations that one could look at for punitives,
14 says how or whether they responded to Plaintiff
15 Carter's complaint of discrimination, I don't think
16 there is anything in the record of a complaint of
17 discrimination made by Ms. Carter.

18 THE COURT: Well, there is an EEOC
19 complaint, Exhibit No. 2, that is in the record. So
20 I guess the question is, are we confusing the jury,
21 right? By having that language in there?

22 MR. MORRIS: Right.

23 THE COURT: What are you suggesting we
24 should have its place, anything?

25 MR. MORRIS: Our suggestion would be just

1 to delete it. She was terminated at that point.

2 THE COURT: Thoughts on how to handle that
3 phrase, how or whether they responded to Carter's
4 complaint of discrimination?

5 MR. GILLIAM: This is the one about Local
6 556, right?

7 THE COURT: Let me scroll back up.

8 MR. GREENFIELD: Okay. Now I'm lost.

9 MR. GILLIAM: With respect to Defendant
10 Local 556 --

11 THE COURT: I mean, the lead-in sentence
12 talks about both, Southwest and 556.

13 So Southwest is proposing we admit how or
14 whether they responded to Plaintiff Charlene
15 Carter's complaints of discrimination saying there
16 are no complaints of discrimination in this case to
17 Southwest. Therefore, it is irrelevant.

18 MR. GILLIAM: My concern is the, I guess,
19 Local 556's acts or other attempts to discriminate
20 against -- or to turn in other employees and whether
21 this would exclude that from consideration.

22 So I would -- which is what I don't want
23 to do.

24 THE COURT: Right.

25 I'm trying to figure out is there a way to

1 phrase it that accomplishes what you want to, but
2 doesn't say "complaint of discrimination," which
3 seems like a term of art that wasn't really used in
4 this case, if that makes sense.

5 I see Southwest's point. I don't know
6 what "it" means. "It" means something. Is there a
7 different way to phrase what "it" means?

8 MR. GREENFIELD: I have not thought of one
9 yet.

10 THE COURT: Okay. It is pattern language,
11 so the question is, do we need to adapt the pattern
12 language to match this case to avoid a jury question
13 on what was the complaint of discrimination?

14 All right. So if we can come up with an
15 understanding of what we-all view it to mean,
16 then --

17 MR. GREENFIELD: I would rather just stick
18 with the pattern language, your Honor.

19 MR. GILLIAM: I think we are fine with the
20 pattern language.

21 MR. MORRIS: We are not fine with the
22 pattern language.

23 THE COURT: I get that you are not. But
24 the question is, I can't -- I can't omit it unless I
25 have something to run with, right?

1 The patterns were meaning to accomplish
2 something, which may have been as simple as what
3 happens to Charlene Carter in this case, right?

4 Now, that is an inartful way of phrasing
5 it, but it means something. I'm not okay with
6 changing the something to nothing. So I have to
7 leave in the something for now, unless the something
8 can be changed to something clearer.

9 MR. MORRIS: Frankly, I am just having a
10 hard time because there was no complaint of
11 discrimination, so I don't know what we would say as
12 an alternative, given that there wasn't one.

13 THE COURT: Right. Which gets back to the
14 issue with the conflict and an accommodation.

15 MR. McKEEBY: Well, what about something
16 like Ms. Carter's situation, which is --

17 THE COURT: That is what I was getting at,
18 right?

19 MR. McKEEBY: Yes. I think that at least
20 is -- at least less confusing. I think the jury
21 would read that and understand what you mean, where
22 as with this, they may not know -- are you talking
23 about the EEOC charge or something else?

24 I mean, the language is not particularly
25 precise, but I think it is better than this.

1 THE COURT: And if we made that change, we
2 would have to make a corresponding change in the
3 next sentence, which talks about with the Union, we
4 can talk about other people, right? We would have
5 to talk about other union members' situations.

6 MR. McKEEBY: It's overruled.

7 MR. MORRIS: Well, I just think
8 "situation" sort of suggests they could consider all
9 kinds of things.

10 THE COURT: Sure.

11 MR. MORRIS: And, quite frankly, I think
12 that is not appropriate. This was intended to allow
13 them to consider one thing.

14 THE COURT: That is fair. What I'm going
15 to say is, we all agree that this language sucks
16 from the patterns, but we can't figure out a better
17 way to do it.

18 So if someone has a bright idea before we
19 finish our formal charge conference, come back and
20 let me know. It is on my page 22. So I'm going to
21 put a placeholder on it.

22 MR. MORRIS: Actually, I might have a
23 proposal.

24 THE COURT: Okay. Did lightning strike,
25 Mr. Morris?

1 MR. MORRIS: Maybe.

2 THE COURT: Okay.

3 MR. MORRIS: You could say, if there is
4 evidence that Carter made the complaint of
5 discrimination to Southwest, it could be considered
6 in addressing punitive damages or something like
7 that.

8 THE COURT: Sure. I mean, it is as good
9 as anything we have seen, which ain't saying much.

10 MR. GILLIAM: Right.

11 I think at that point, we prefer the
12 pattern instruction.

13 THE COURT: My inclination is, if we stick
14 to the pattern, and we may see a question on this.
15 They may ask us what complaint of discrimination are
16 you talking about? And then we will have to figure
17 it out.

18 But until then, I haven't heard anything
19 that I'm more comfortable with than the pattern.

20 But I like the fact that you brought it
21 up. If no one brings up the idea, then we won't get
22 a better idea.

23 Okay. So I will overrule the request for
24 now on changing the language from the patterns on
25 complaint of discrimination in the section on

1 punitive damages that we are on.

2 What other issues do we have with the
3 punitive damage instructions?

4 I will say, with regard to your pointing
5 out of that language, we say "Charlene," when he
6 have kept out her first name, except for the first
7 reference, so I am going to delete the word
8 "Charlene" from that sentence.

9 Okay. Other language on punitives?

10 MR. GILLIAM: Nothing from plaintiffs.

11 MR. MORRIS: Nothing from Southwest.

12 MR. GREENFIELD: Nothing else from the
13 Union.

14 THE COURT: Okay. I found one more
15 reference to Charlene after the enumerated list of
16 three and the punitive instructions, so I have got
17 that.

18 So we are done with punitives. We are on
19 to front pay. In my draft, that is page 23, is
20 where it starts.

21 MR. GREENFIELD: And just, your Honor, if
22 I may?

23 THE COURT: You may.

24 MR. GREENFIELD: We either would ask for
25 an instruction or some other alternative as we

1 don't -- we object to being -- to front pay being
2 applied to us.

3 In our formal conference briefing, we cite
4 to Mota v. University of Texas, Texas Health, front
5 pay, definition-ally covers monetary damages for
6 future lost wages and benefits, front pay is awarded
7 only when reinstatement is not feasible because
8 hostile relationships exists between the employer
9 and the employee. Front pay is an equitable remedy
10 to be determined by the Court at the conclusion of
11 the trial, but an advisory jury may be used.

12 The Union has no ability to give
13 Ms. Carter her job back or have any say in that, and
14 we should not be liable for any front pay damages.

15 THE COURT: I understand that argument.

16 Let me say two things about it.

17 First, I'd probably like to consider it
18 more in a post-verdict context, when we have had the
19 benefit of the full record and the full briefing on
20 it.

21 But let me ask this question: When you
22 said advisory, yes, I do agree that they wouldn't be
23 binding on me unless I said nothing about advisory
24 and everyone consented to it.

25 I'm fine putting in an advisory caveat. I

1 thought about that, and so I can put it in here if
2 it is not in here already.

3 Any objections to me putting in an
4 advisory caveat? And then if they go haywire, then
5 we can all revisit it in post-trial proceedings,
6 whether that is on the paper with affidavits or that
7 is another evidentiary hearing.

8 MR. GILLIAM: I think you have one in
9 there, your Honor.

10 THE COURT: Do I have one in there? Is it
11 in the questions, not here? Or is it somewhere else
12 in --

13 MR. GILLIAM: The very last sentence in
14 that section.

15 MR. GREENFIELD: Your Honor, I just
16 included kind of the full scope of what I thought
17 front pay was. And I bet you it left it at that, it
18 is just that it doesn't -- we believe it doesn't
19 apply to the Union.

20 That is all that was for.

21 THE COURT: Okay. Got it.

22 And so I'm only overruling it to the
23 extent I don't know enough about it yet. I'm going
24 to see what the jury says.

25 And we did have the caveat on advisory, so

1 I think we are covered there.

2 Okay. Other issues with front pay?

3 MR. GILLIAM: Nothing from plaintiff.

4 MR. MORRIS: Nothing. We just -- well,
5 aside from reiterating the objection that it is for
6 the Court, but, you know, nothing additional.

7 THE COURT: Understood.

8 So I will understand that objection, which
9 is why I'm putting in the advisory language. I'm
10 not bound by it at all.

11 Okay. So now we should look at nominal
12 damages.

13 MR. GILLIAM: Nothing from plaintiff.

14 THE COURT: Anything on nominal from
15 Southwest or the Union?

16 MR. GREENFIELD: None from the Union, your
17 Honor.

18 MR. MORRIS: None from Southwest, your
19 Honor.

20 THE COURT: All right.

21 So mitigation is next.

22 MR. GREENFIELD: Just to make note to the
23 Court that it says "Charlene" several times, but
24 other than that ...

25 THE COURT: Thank you.

1 In mitigation --

2 MR. GREENFIELD: Or -- I'm sorry, no. It
3 is taken out. It was in my old copy.

4 Sorry, Ms. Silver.

5 THE COURT: Every draft is getting
6 slightly better.

7 MR. GREENFIELD: Take my stones back.

8 THE COURT: And plenty other places.

9 MR. GREENFIELD: The Union has no issue
10 with the mitigation instruction.

11 THE COURT: All right.

12 Any issue from Carter or Southwest on the
13 mitigation language?

14 MR. GILLIAM: Nothing from Carter.

15 MR. MORRIS: Yes, your Honor.

16 The first requirement indicating that
17 there has to be substantially equivalent employment
18 available.

19 We think that is not appropriate based on
20 the evidence in the record that Ms. Carter ceased
21 looking for employment and was engaged in various
22 nonprofit endeavors.

23 So we think the instruction should
24 indicate that if you cease searching for employment,
25 you've failed to mitigate at that time.

1 THE COURT: Understood.

2 Response?

3 MR. GILLIAM: It is an element of the
4 mitigation, right? So I think that they do have
5 that burden to prove.

6 MR. MORRIS: If it helps the Court, we
7 cited various cases on this issue in our response to
8 the instruction that indicate that if there is
9 evidence that an employee has ceased looking for a
10 job, then that mitigation instruction could be
11 altered.

12 THE COURT: Understood.

13 I think I'm going to leave it as is. So I
14 will overrule that objection.

15 Okay. Other issues on mitigation?

16 MR. GREENFIELD: None from us, your Honor.

17 MR. GILLIAM: None from plaintiff.

18 MR. MORRIS: No others from Southwest.

19 THE COURT: All right.

20 Duty to deliberate. First paragraph is on
21 notes, and it addresses from there.

22 MR. GREENFIELD: Nothing from the Union,
23 your Honor.

24 MR. GILLIAM: Nothing from plaintiff.

25 MR. MORRIS: Nothing from Southwest.

1 THE COURT: Okay.

2 What I will do, then is I will give y'all
3 a 10-minute break. We can use the bathroom, and
4 then come back and talk about the jury questions.

5 And then that will be it for y'all for the
6 day for here. And then we will work on printing
7 this thing out, once we've made any final changes
8 based on reviewing a couple of things that I
9 flagged.

10 Okay. So we are in a 10-minute recess.

11 I will see y'all at 4:46.

12 THE COURT SECURITY OFFICER: All rise.

13 (Recess.)

14 THE COURT SECURITY OFFICER: All rise.

15 THE COURT: Thank you. You can be seated.

16 MR. McKEEBY: Your Honor, Mr. Morris has
17 the proposed language on that one instruction he
18 wants to read, and I actually also have a
19 housekeeping-type question.

20 THE COURT: You bet. Housekeeping first?

21 MR. McKEEBY: Yes, please.

22 I'm assuming, given that the evidence is
23 closed, that if elect to use a PowerPoint during my
24 closing, I do not need to share that with counsel?
25 But I wanted to confirm that now before --

1 THE COURT: Sure.

2 So my request is for -- and I said this
3 briefly before we did voir dire on day one. If
4 y'all have demonstratives that you want to use that
5 exist, then please disclose them the night before at
6 8:00, so do not disclose them at 6. I assume you
7 will be working on them at 6. But if you can
8 disclose them the night before at 8.

9 That is for anyone who is using a
10 PowerPoint for closing tomorrow. Show it to the
11 other side, so we can talk about it tomorrow before
12 the jury gets here and we read the charge.

13 Does that make sense?

14 MR. McKEEBY: So the entire PowerPoint,
15 then, not just the demonstratives?

16 THE COURT: That's correct.

17 MR. PRYOR: So the displaying of exhibits
18 to the jury, testimony from the dailies that is not
19 part of a PowerPoint, can be utilized?

20 THE COURT: How would it not be part of
21 the PowerPoint?

22 MR. PRYOR: I'm sorry? Yes, okay.

23 THE COURT: So my question to you is, I
24 didn't hear your question fully. You are asking --

25 MR. PRYOR: Yes. I'm not doing a

1 PowerPoint. It is --

2 THE COURT: What are you doing?

3 MR. PRYOR: That is too close to my
4 bedtime.

5 But I have to -- I'm going to use
6 exhibits. I'll say Matt, put exhibit so and so up.

7 I may refer to a daily trial transcript as
8 demonstrative evidence. And I will fill in the
9 blanks on the jury form, but I'm not sure what I'm
10 going to do until I put it on the ELMO.

11 THE COURT: Sure. So on the ELMO, that is
12 something that doesn't currently exist, right? But
13 when we are talking about depo transcripts, that is
14 something that does exist, right? That you are not
15 creating on the fly.

16 MR. PRYOR: Right.

17 THE COURT: So I would ask you to disclose
18 that or -- you can just say numbers, right? You
19 don't have to --

20 MR. PRYOR: What am I disclosing?

21 THE COURT: Exhibits or numbers, right?

22 So what I'm saying is, you're trying to
23 make sure you do the same thing he does, but to not
24 put in a PowerPoint, so you don't have to show it to
25 him. And I don't think that is fair, right?

1 So either we all show PowerPoints, or what
2 we are going to use, or we don't show anything.

3 But I don't think I can have one rule for
4 the people who use PowerPoint and a different rule
5 for the people who use the native exhibit and then
6 pull up a depo transcript.

7 MR. McKEEBY: Oh, trial transcript.

8 THE COURT: Trial transcript.

9 MR. PRYOR: Your Honor, it is also very
10 possible during my closing I will think of an
11 exhibit that I want. And I don't know tonight.

12 I mean, I will be happy to -- I'm making a
13 list right now. But you are telling me on the fly
14 tomorrow if I decide, oh, I do want to see
15 Exhibit 66, pull up -- I happen to know what that
16 one is.

17 THE COURT: As long you are okay not
18 seeing the PowerPoint at all, that is fine by me,
19 right? That is what we are getting into is, I want
20 to make sure we don't have an incongruence here,
21 where you get to see their stuff and they don't get
22 to see your stuff.

23 MR. McKEEBY: I'm fine with that. I
24 prefer that, frankly.

25 MR. PRYOR: Okay.

1 THE COURT: How about this: I just ask
2 that if you are pulling from trial materials, that
3 is actually the trial materials, right? You are
4 actually pulling from the depo, the trial
5 transcript, you are actually pulling from the
6 exhibit, and you are not altering it in any way,
7 right?

8 MR. McKEEBY: So we are not sharing it?

9 THE COURT: Not sharing.

10 MR. PRYOR: Okay.

11 THE COURT: And also not fabricating
12 anything, right?

13 MR. PRYOR: You are so strict.

14 THE COURT: I know.

15 MR. HILL: On not fabricating, let me make
16 sure we are that we are on the same page on one
17 issue here.

18 THE COURT: Sure.

19 MR. HILL: One thing we may do is show a
20 witness and show their question-and-answer
21 testimony. Meaning, like a picture of the witness
22 that we have from a deposition or something and then
23 the question-and-answer testimony.

24 THE COURT: I think that is sufficiently
25 similar to what actually happened as to not cause

1 concerns in my mind.

2 MR. HILL: I thought that would be the
3 case. I just wanted to confirm.

4 THE COURT: If you -- where do your
5 pictures of witnesses come from? Like, are you
6 pulling old, like, arrest photos or something? I
7 have seen pictures get very interesting. So -- and
8 that actually does make me want to ask.

9 MR. HILL: Primarily, to the extent that
10 they were deposed, they would come from --

11 THE COURT: From video depositions, sure.

12 MR. HILL: To the extent that they weren't
13 deposed, if there is one in an exhibit somewhere,
14 then we would pull it from there, an exhibit that
15 has been admitted --

16 THE COURT: So you are getting it from the
17 case, not from searches of county jail records or
18 something like that?

19 I have seen -- I have seen some really
20 interesting stuff before.

21 MR. GREENFIELD: Hold on, your Honor.

22 There is pretty wild pictures in this --
23 in the evidence today, so I am slightly concerned
24 because of that, the pictures that Mr. Hill --

25 MR. HILL: I'm not going to be using it if

1 somebody is wearing a hat or holding a sign or
2 something.

3 THE COURT: That's a good point.

4 MR. HILL: It's going to be just -- it's
5 going to be trying to show them who that person is.

6 THE COURT: A professional setting
7 photograph taken from evidence in this case.

8 MR. McKEEBY: Yes. And to that end, I
9 mean, if we do show an exhibit in a -- you know,
10 either in native format or in a PowerPoint, I mean,
11 my thought would be that, you know, you would affix
12 the exhibit number to the -- to the display so that
13 the parties know and the jury knows what we are --

14 THE COURT: And I will say, I prefer that.
15 If someone doesn't do that, you have got to at least
16 tell everyone what exhibit you are talking about,
17 right? Out of fairness. Everyone has a right to
18 know.

19 And so if you can't technologically add
20 the label to it, then you at least need to talk
21 about it as soon as it comes up. Otherwise, I don't
22 know that it was admitted into evidence. When y'all
23 do that, then I usually cross check and make sure it
24 was in, right? Because I have got my list. And if
25 I can't cross check, then I'm going to stop you.

1 Does that make sense?

2 Okay. Any other housekeeping things?

3 THE COURT: Okay. So Mr. Morris, you had
4 language. Is this in page 17ish, C-1? Or somewhere
5 else?

6 MR. MORRIS: It is under 3 -- the third
7 paragraph, an accommodation means, that paragraph.

8 THE COURT: Okay. I'm at, "An
9 accommodation means," which is for me on page 17,
10 but I don't know about anyone else.

11 MR. MORRIS: I would propose a reasonable
12 accommodation is one that eliminates or resolves the
13 conflict between the employee's religious belief or
14 practice or -- and a conflicting employment
15 requirement.

16 THE COURT: Okay. What is Carter's
17 position on that? New language or current language?
18 Or something else?

19 MR. GILLIAM: We prefer the current
20 language, not the proposed amended language. We
21 think that it is -- it is very legal, highly
22 technical, and may be confusing to the jury. We
23 think that the current language is -- clearly
24 represents what an accommodation is and does not
25 cause confusion for the jury.

1 THE COURT: Understood.

2 I will overrule that request to change
3 that language.

4 MR. MORRIS: Your Honor, and while we are
5 here, something else just jumped out to me that is a
6 little confusing.

7 THE COURT: Sure.

8 MR. MORRIS: We refer to accommodation
9 repeatedly. I think it should be "reasonable
10 accommodation" or "reasonably accommodate," which
11 is, I think, consistent with what the law requires.
12 It is just a proper terminology.

13 THE COURT: I see your point. But I think
14 we also have reasonable for accommodation somewhere
15 else in the charge and I'm not sure we need to add
16 it every place. I appreciate the request.

17 I will overrule that.

18 Okay. Any other issues before we talk
19 questions?

20 MR. GILLIAM: None from the plaintiff,
21 your Honor.

22 MR. MATTHEWS: None from Southwest.

23 THE COURT: Okay.

24 Anything else from the Union or are we
25 ready to talk questions?

1 MR. GREENFIELD: We are ready to talk
2 questions, your Honor.

3 THE COURT: Okay. So questions, we tried
4 to put in some sign-posting given that we broke some
5 of these questions out as to Southwest and Union,
6 because it is long now. We have got 34 pages of
7 questions.

8 So let's go to Question 1.

9 Any issues on Question 1?

10 MR. GREENFIELD: Yes, your Honor, I do.

11 From a global point, I would just, again,
12 request that -- object to the general verdict form
13 in lieu of the special verdict form that we
14 submitted to the Court.

15 Again, I believe the purpose of this is to
16 avoid confusion, appellate uncertainty, and the need
17 for additional proceedings.

18 I just, again, just seek that the special
19 instructions be included instead of the general.

20 And I would ask that the Court recognize
21 for us to -- our Exhibit 1 to our filing, as opposed
22 to me going through and reading off every single
23 special instruction that we have deemed. I would
24 seek to submit that in lieu of that.

25 THE COURT: Based on my discussion with

1 Gilliam, I think that is the kind of circumstance
2 where we should file something and refer to it.

3 Is this -- I can't remember if it was by
4 email or filed on the docket.

5 Do you recall if it was?

6 MR. GREENFIELD: I filed it as an exhibit
7 to a motion, and then I filed it as an exhibit. And
8 then I circulated a separate Word document.

9 THE COURT: Okay. Do you recall what
10 exhibit number that was?

11 MR. GREENFIELD: Exhibit 1.

12 THE COURT: To docket number?

13 MR. GREENFIELD: Yes, I don't know.

14 THE COURT: How about his: Try to find
15 out before the end of our time, and then we will put
16 it in there. And then you have absolutely hit the
17 nail on the head, incorporated that document by
18 reference. But I would just like to get that docket
19 number in. I'm fine with you incorporating that by
20 reference.

21 I will say that I have read the document
22 you are referring to. I don't remember what docket
23 number it is. And I appreciate your request for a
24 special verdict form.

25 I will overrule it, but I do believe your

1 argument to be preserved. I just hope we can get
2 that docket number on.

3 MR. GREENFIELD: Yes, your Honor. I will
4 search for that right after my next point, because I
5 have another issue on Question 1.

6 THE COURT: You may fire your other
7 question now.

8 MR. GREENFIELD: Yes, your Honor.

9 Just for preservation's sake, we would
10 seek the same language we sought previously for
11 Ms. Carter -- for the Question No. 1, that it should
12 read, "Has Plaintiff Carter proved that Audrey Stone
13 was acting exclusively/solely in her official
14 capacity" to include that language.

15 The rights of all employees at Southwest
16 Airlines are protected by multiple facets of
17 numerous statutes that prevent various forms of
18 harassment within the workforce, Title VII, FMLA,
19 ADA, et cetera.

20 Southwest Airlines, operating as a private
21 employer, an at-will employment state can terminate
22 their employees for good reason, bad reason, or no
23 reason at all, as long as it is not an illegal or
24 discriminatory reason.

25 Congress and the Courts have agreed to

1 give private employers wide latitude, free of
2 interference, to make their own business decisions.
3 These business decisions, including setting their
4 own policies and procedures regarding matters such
5 as bullying and harassment in the work place. These
6 policies and procedures can always be more
7 protective of employee rights than federal
8 employment law.

9 But, nevertheless, Ms. Stone's decision to
10 turn in plaintiff Charlene Carter was -- if it was
11 in any way made to protect her rights as an
12 employee, she legally had the right to make that
13 report to Southwest Airlines. Otherwise,
14 Ms. Stone's rights as an employee would be
15 subservient to those of plaintiff's rights, to be
16 free from any alleged retaliation by the Union, to
17 which she no longer belonged.

18 Contiguously, if an agent of the Union
19 that exercises a scintilla of their protected rights
20 as an employee, the Union could --

21 THE COURT: You need to slow down. We're
22 having a hard time grabbing your speed reading.

23 MR. GREENFIELD: Yes, your Honor.

24 And I'm sorry, Ms. Willis. Where did you
25 lose me?

1 THE COURT: To which he no longer --
2 retaliation by the union, to which he no longer
3 belonged.

4 MR. GREENFIELD: And I said, contiguously,
5 if an agent of the Union then exercises a scintilla
6 of their protected rights as an employee, the Union
7 could not possibly be held liable sans one
8 situation: The union agent was acting exclusively
9 or solely in their capacity as a union agent.

10 The decision must have been made
11 exclusively or solely in Ms. Stone's capacity as a
12 union president to bind the Union, or else it
13 requires all union agents to potentially relinquish
14 their own federally-protected rights.

15 Nevertheless, if the Court decides to
16 exclude that language, we urge the adoption of an
17 additional question, allowing the jury to consider
18 whether the speech, though protected in content and
19 made in Ms. Stone's official capacity, was also
20 sufficiently harassing or threatening that it
21 potentially altered the condition of Ms. Stone's
22 employment.

23 Sorry. I just wanted to get that on the
24 record, your Honor. That is why I was speaking so
25 quickly.

1 THE COURT: I appreciate that, but
2 remember, this is the time to preserve, not the time
3 to persuade.

4 MR. GREENFIELD: Yes.

5 THE COURT: Okay. I understand your
6 argument, but I will overrule that request to have
7 exclusive language in Question 1.

8 Other issues with Question 1?

9 MR. MORRIS: Not from Southwest.

10 MR. GILLIAM: None from Carter.

11 THE COURT: All right. Question 2.

12 MR. GILLIAM: None from Carter.

13 MR. GREENFIELD: I'm sorry, your Honor,
14 just back to Question 1 real quick, we would seek
15 that it would be appropriate to include some sort of
16 additional language that says something along the
17 lines of, if no to this answer, if Ms. Stone was not
18 acting exclusively/solely in her capacity as union
19 president -- or sorry -- take out the language that
20 I was asking, just as written by -- as is, then no
21 more questions are required to be answered of --
22 regarding liability on the Union.

23 If Ms. Stone -- it stops there for us,
24 essentially, if the answer is no.

25 THE COURT: I understand that. And I will

1 reference back to my earlier conversation. I try,
2 to the extent possible, to pull out some of these
3 conditioning questions so that if they answer no, we
4 all know that the Union is done, right? And I can
5 certainly enter judgment to that effect.

6 If the Fifth Circuit finds out that their
7 answer to 1 was wrong, and they said they should
8 have answered 2, then they have an answer to 2 now,
9 right?

10 So I get your point. I'm not misled as to
11 what the effect of a "no" answer on Question 1 is,
12 but I'm trying to make sure that we don't have to
13 try this case three, four, or five times.

14 If we just -- you know, we got Question 1
15 wrong first; then later on next year, we got
16 Question 3 wrong. And then -- I would like this to
17 be the last time we have to try this case, even if
18 there is an incorrect jury answer. This lack of
19 conditioning for some of these questions may not
20 solve all of those problems.

21 Okay. So I get your request. I will
22 overrule it.

23 Any other questions on Question 1?

24 Okay. So now we are on to 2.

25 Any issues on 2?

1 MR. GILLIAM: No issues from plaintiff.

2 MR. MORRIS: None from Southwest.

3 MR. GREENFIELD: Just a running objection
4 for the request to the special instruction, which I
5 will submit to the Court. And I will look for that
6 number right now.

7 THE COURT: That sounds great. I will
8 give you that request for a special instruction
9 running objection.

10 Okay. Question 3.

11 MR. GILLIAM: No objections from the
12 plaintiff.

13 MR. MORRIS: None from Southwest.

14 THE COURT: All right. Anything
15 union-wise on Question 3, other than the special
16 instruction running objection?

17 MR. GREENFIELD: One moment, your Honor.
18 I'm scrolling right now.

19 No, your Honor. Just the same special
20 instruction.

21 THE COURT: Okay. Question No. 4.

22 MR. GILLIAM: Your Honor, I would just
23 state our same objection for the record to the jury
24 charge that the -- this affirmative defense issue
25 shouldn't be here under NRLB v. Allied Aviation; but

1 otherwise, no issue.

2 THE COURT: I understand that request.

3 I will overrule that.

4 Any other issues on 4?

5 MR. MORRIS: None from Southwest.

6 MR. GREENFIELD: None from us, your Honor,
7 other than the running objection.

8 THE COURT: Understood.

9 I will overrule that.

10 Okay. Question 5.

11 No objection from plaintiff.

12 MR. MORRIS: None from Southwest.

13 MR. GREENFIELD: Just the running
14 objection from the Union.

15 THE COURT: All right. I will overrule
16 that.

17 Question 6?

18 MR. GILLIAM: Your Honor, just reiterating
19 the same objection we had to Question 4 regarding
20 the Wright Line affirmative defense. We don't think
21 it should be part of the charge; otherwise, no issue
22 with Question 6.

23 THE COURT: I understand your Wright Line
24 objection. I will overrule that.

25 Any other issues on 6?

1 MR. GREENFIELD: Yes. On Question No. 6,
2 the Union seeks the same similarly-situated,
3 non-Christian employees to be included in this
4 question.

5 THE COURT: Understood.

6 For consistency, I will overrule that.

7 Anything else on 6?

8 Okay. On to 7.

9 MR. GREENFIELD: I don't believe I had any
10 actually separation out on the accommodation case
11 claims, so I don't believe I have any. If I did, I
12 would preserve them with the same running objection.

13 THE COURT: So what is your request,
14 Mr. Greenfield?

15 MR. GREENFIELD: I don't know exactly,
16 your Honor.

17 THE COURT: Sure. That is fine. I will
18 let you gather it.

19 MR. GREENFIELD: I don't actually -- I
20 didn't change that, so none, your Honor. I do --
21 would just, again, seek the inclusion of a separate
22 question on undue hardship, and that we seek to add
23 in that affirmative defense into the jury charge,
24 just for preservation's sake, your Honor.

25 THE COURT: Understood.

1 I appreciate that. I will overrule that
2 on undue hardship for the Union.

3 Anything else on 7?

4 MR. GILLIAM: Nothing from plaintiff, your
5 Honor.

6 MR. MORRIS: Nothing from Southwest.

7 THE COURT: All right.

8 Question 8.

9 MR. MORRIS: Your Honor, just for
10 consistency between Questions 8 and 9, if you look
11 at the -- Question 8, the last part of that question
12 says "exercising her rights under the Railway Labor
13 Act." Question 9 says, "engaged in activity
14 protected by the Railway Labor Act."

15 We think the latter is the appropriate
16 phrase, and so that the end of that sentence from
17 question 9 should also be in question 8.

18 THE COURT: Understood.

19 Does Carter have a position on conforming
20 Question 8 more to Question 9, statement on engaging
21 in protected activity under the Railway Labor Act as
22 opposed to exercising rights under the Railway Labor
23 Act?

24 MR. GILLIAM: I think it should be engaged
25 in protected activity, engaged in activity protected

1 by the Railway Labor Act.

2 THE COURT: I think that is a good change,
3 so let me make that and then I will flash my screen.

4 Okay. So here is how Question 8 is
5 reading now after that proposed change.

6 "Has Plaintiff Carter proved that
7 Defendant Southwest retaliated against Plaintiff
8 Carter for engaging in activity protected by the
9 Railway Act -- Railway Labor Act," which matches up
10 to Question 9.

11 MR. GILLIAM: That is right, your Honor.

12 No objection.

13 THE COURT: All right. So that was
14 Question 8.

15 Now, down to 9.

16 MR. GREENFIELD: And, your Honor, before
17 we move on to No. 9, it is Docket 333, Exhibit 1.

18 THE COURT: So Docket 333, Exhibit 1 is
19 your specific request for a special verdict as
20 opposed to a general verdict form?

21 MR. GREENFIELD: Yes, your Honor.

22 THE COURT: Okay. So I will let you
23 incorporate that by reference, then.

24 I am overruling your request for that
25 verdict form, but thank you for bringing up the

1 docket number.

2 MR. GREENFIELD: Sure.

3 THE COURT: Okay. So we have moved on
4 from Question 8, we are on Question 9.

5 Any issues with 9?

6 MR. GILLIAM: I'm confused. I thought
7 that we -- I thought we solved this one already.
8 Something about the formatting I'm seeing on this
9 has me confused.

10 Nine, I think, would be our Wright Line
11 mixed-motive objection that I would just reiterate,
12 if I'm looking at the right sentence. I realize I
13 may have been looking at the wrong thing earlier
14 when I made that objection.

15 THE COURT: Sure.

16 MR. GILLIAM: The formatting is screwed up
17 on -- I was looking at it on my phone.

18 But yes, we would reassert our Wright Line
19 objection here for all of the reasons we stated
20 earlier. No other issues.

21 THE COURT: Understood.

22 I appreciate your request. I will
23 overrule that at this time.

24 Okay. Anything else on Question 9?

25 MR. GILLIAM: Nothing from Carter.

1 MR. MORRIS: Nothing from Southwest.

2 THE COURT: All right. How about Question
3 10?

4 MR. GILLIAM: No objections from Carter.

5 MR. MORRIS: No objections from Southwest.

6 THE COURT: All right.

7 On to 11.

8 MR. GILLIAM: I'm sorry, your Honor. We
9 would reiterate our same motivating factor objection
10 that we made earlier, that -- instead, that it
11 should be stated that her sincerely-held religious
12 observances, beliefs, or practices was a motivating
13 factor in Southwest's decision to discharge Carter.

14 THE COURT: I understand that objection.
15 I will stick to the pattern language, but
16 acknowledge that you may have an argument there, if
17 anyone needs to take it up.

18 Okay. Eleven.

19 MR. MORRIS: Your Honor, this is sort of
20 related to 11, which is the conflict question should
21 precede Question 11, when it is a conflict between
22 her religious beliefs or practices and the
23 requirement of employment.

24 THE COURT: What is your proposed
25 question?

1 MR. MORRIS: "Has Plaintiff Carter proved
2 that she had a religious belief or practice that
3 conflicted with the requirement of her employment
4 with Defendant Southwest?"

5 THE COURT: Understood.

6 I will overrule that objection, but I
7 appreciate the question.

8 Okay. So now we are to Question 11.

9 Carter had no objection.

10 Is there a Southwest objection, other than
11 the lack of a predicate on conflict?

12 MR. MORRIS: I would just say "reasonably
13 accommodate" there, again.

14 THE COURT: I understand that, but I will
15 stick to the current language. I will overrule that
16 objection.

17 Anything else on 11?

18 All right. We are at 12. Your reasonable
19 accommodation language came up here.
20 Congratulations. It is in 12.

21 MR. GILLIAM: Your Honor, our objection
22 would be that it should state in accordance with
23 Weber, has proved that any reasonable accommodation
24 claim -- or any reasonable accommodation would have
25 imposed an undue hardship on Defendant Southwest.

1 THE COURT: So you are wanting to swap
2 "each" with "any," is that the upshot of your
3 change?

4 MR. GILLIAM: Yes. And I don't know that
5 a specific reasonable accommodation has specifically
6 been claimed. In fact, that is one of our
7 arguments, that they didn't initiate any
8 accommodation efforts to suggest that there was one
9 as claimed.

10 THE COURT: So can you talk to me on why
11 it should be "any" versus "each" accommodation?

12 MR. GILLIAM: Yes. Under Weber, because
13 they -- because Southwest never initiated any
14 accommodation efforts, it -- it has to show that --
15 it couldn't have undertaken any accommodation that
16 would have -- that any accommodation they could have
17 taken would have imposed the undue hardship, which I
18 think is consistent with the wording in the charge
19 itself.

20 THE COURT: Can we pull that back up?

21 So I have got at the bottom of my draft on
22 page 17, I have a sentence saying, "Defendant
23 Southwest must establish by a preponderance of the
24 evidence that it did not accommodate Plaintiff
25 Carter because any accommodation would have imposed

1 an undue hardship on Defendant Southwest."

2 MR. GILLIAM: You could use the word "any"
3 in the question, too.

4 THE COURT: So I would like to hear
5 Southwest's thoughts on this one.

6 MR. MORRIS: I'm not sure -- I'm not sure,
7 frankly, I understand the --

8 THE COURT: Sure. So it's fighting over
9 one word, "any" versus "each." Right now, we talk
10 about in the question "each accommodation." And the
11 question is, do we make the change to any
12 accommodation.

13 Their argument is that they never
14 requested an accommodation because Carter was fired
15 before she could make such a request. I guess the
16 thought on my end is, the accommodations were never
17 really discussed by either side.

18 And so I think it makes sense -- it
19 doesn't say any accommodation requested by Carter or
20 any one thought of by Southwest. It just refers to
21 an accommodation, whoever thought of it.

22 I think it makes to sense any because,
23 one, that is what we say in the charge; but two, if
24 everybody is saying no specific accommodation was
25 discussed, I don't want the jury penalizing other

1 side, Southwest or Carter, if there is not a
2 specific accommodation. And they come back and say
3 each, what were they? We would come back and say, I
4 don't know.

5 So my thought would be to say "any" to
6 conform to the charge and because we don't have a
7 specific accommodation at the time that either side,
8 Southwest or Union or Carter, had discussed. But
9 that is my leaning without knowing more about any
10 versus each.

11 MR. GILLIAM: The other part of the
12 objection is to the phrase "claimed in this case,"
13 because I think --

14 MR. MORRIS: Well, I think wouldn't each
15 reasonable accommodation or each accommodation
16 incorporate all? Because there is no specific --
17 there is none enumerated here and there's none that
18 have been raised.

19 THE COURT: Right.

20 But the question is, does it incorporate
21 all, if any?

22 MR. MORRIS: Right.

23 THE COURT: Any presupposes if any -- each
24 presupposes there is more than one, right? And so
25 we have accommodations that have been discussed at

1 trial, like blocking, ignoring on the part of the
2 Union. Or, you know, on the part of Southwest,
3 disclaimer on the Facebook page or pulling down the
4 nexus photographs.

5 So we have multiples that were discussed
6 at trial. But I think this almost anchors it back
7 at the time, right? At the time of the termination.
8 What happened at the time of the termination, all
9 sides were talking about none.

10 And so "each" presupposes two or more.
11 "Any" supposes zero or more. So I don't know. I
12 think "any" more accurately matches the factual
13 circumstance at the time, even though at trial
14 multiple accommodations had been discussed for
15 Southwest and the Union.

16 MR. GILLIAM: And consistent with what you
17 said, I think that "claimed in this case" should be
18 omitted as well.

19 THE COURT: So you are saying "any
20 reasonable accommodation claimed in this case"?

21 MR. GILLIAM: I think it is consistent
22 with the jury charge language, too.

23 THE COURT: So what I plan on doing is,
24 any instead of "each," omitting claims, but not
25 saying "in this case." I know that is splitting

1 hairs, but "in this case" can include in this trial,
2 right? Or earlier factually on.

3 So I would say, "Do you find the Defendant
4 Southwest has proved that any reasonable
5 accommodation in this case would have imposed an
6 undue hardship on Defendant Southwest?"

7 Does Southwest want to object to that
8 language or you object keeping "in this case"?

9 MR. GILLIAM: We still object to "in this
10 case." Again, you know, our position is that when
11 they repudiate all efforts to accommodate, they have
12 to show that any and every possible accommodation
13 would have imposed an undue hardship.

14 THE COURT: I understand that argument.
15 And I will overrule that request and keep in, "in
16 this case."

17 MR. MORRIS: Your Honor, I think we are
18 okay with that language, except I think the concept
19 of "reasonable" should be removed in this case -- in
20 this instance because --

21 THE COURT: Question 11?

22 MR. MORRIS: Well, right. And because,
23 you know, a reasonable accommodation is one that
24 eliminates the conflict between the religious
25 practice and the employment requirement.

1 And just to use some of the examples they
2 just raised, blocking Ms. -- you know blocking --
3 Ms. Stone blocking Ms. Carter or removing a nexus
4 photograph doesn't do -- has nothing to do with the
5 conflict between Ms. Carter's stated religious
6 belief or practice, i.e. sharing her view that
7 abortion is bad and the requirement of her job.

8 So I don't really concede that any
9 reasonable accommodation has been raised or at
10 issue, or anything like that.

11 THE COURT: So you would cut the
12 "reasonable" modifier?

13 MR. MORRIS: Correct.

14 THE COURT: And I think out of consistency
15 with 11, that makes sense to me. Bring in the
16 concept now -- I think we should either bring in the
17 concept in 11 or leave it out in both for
18 consistency's sake.

19 We have charged the reasonableness of
20 accommodation. They know it has got to be
21 reasonable. Either we have got to put it in, in
22 both places or pull it out. I would be inclined to
23 deleting words instead of adding them at this point,
24 given that I will have to read each word tomorrow.

25 But any argument from Southwest on

1 "reasonable" in or out on Question 12?

2 MR. GILLIAM: I think it is fine with it
3 being in. I just want to clarify our position is
4 that "any" doesn't mean just one, it means "every."
5 Again, based on Weber and Hacienda Hotels, a Ninth
6 Circuit case.

7 THE COURT: Right. And I'm just trying to
8 make sure that the jury would read it that way.

9 I understand that argument, right? If
10 there is one accommodation, that would have been an
11 undue hardship. But another accommodation, that
12 wouldn't be, then they can't prove undue hardship,
13 right? Because one accommodation would not have
14 been an undue hardship. So I'm trying to make sure
15 that the working is sufficiently clear.

16 Now that I've changed "any," I'm trying to
17 make sure that my "any" has not allowed the jury to
18 think one is an undue hardship, the other is not an
19 undue hardship.

20 Well, the first thing I'm going to do is
21 pull out "reasonable" to be consistent with 11, and
22 then I'm going to look at the sentence. I will show
23 you my current draft of what I'm looking at.

24 MR. GILLIAM: I would argue it proves any
25 possible combinations.

1 THE COURT: I would be more inclined to
2 say "any and all accommodations." Does that make
3 sense? Because possible now seems like it is
4 changing a reasonable accommodation standard to
5 something different. But "any and all" presupposes
6 that the number is zero to whatever the maximum
7 number of accommodations would have been, that all
8 of those are an undue hardship.

9 MR. GILLIAM: "Any and all," I think makes
10 sense.

11 THE COURT: Okay. Let me put it in here,
12 we will see how it reads.

13 Am I grammatically incorrect on any and
14 all accommodation, accommodations? I don't know if
15 I'm violating the rules of grammar.

16 All right. I think this satisfies the
17 concerns on bringing out "reasonable," but having
18 whatever accommodations would have been in play in
19 this case be undue as the proper standard.

20 So now with this language, y'all can
21 object to it. Does anyone have an objection to it?
22 Is everyone glazed over? You can't object to it?

23 MR. GILLIAM: I have already stated -- I
24 guess I will reiterate it, just we would object to
25 the inclusion of "in this case."

1 THE COURT: Right. I have still kept that
2 in.

3 MR. GILLIAM: But no other objections.

4 THE COURT: Okay. Any objection to "any
5 and all accommodations"?

6 MR. MORRIS: I guess I will just state for
7 the record I think that there is no evidence of any
8 accommodations that have been really proposed or at
9 issue, but I think that is it.

10 THE COURT: Understood.

11 So I will overrule that objection, keep
12 Question 12 in its current -- in its modified form.

13 Okay. So next question, 13, lost wages.

14 On Local 556?

15 MR. GREENFIELD: No objection, your Honor.

16 THE COURT: Anything from Carter on
17 Question 13?

18 MR. GILLIAM: No, your Honor.

19 MR. MORRIS: Your Honor, just one thing
20 from Southwest.

21 THE COURT: Yes.

22 MR. MORRIS: And I sort of apologize a
23 little bit, because I did request that these be
24 broken up, and I think that is good.

25 But just the way the damages questions,

1 with respect to Local 556 and Southwest are
2 worded -- you know, for example, if you look at the
3 lost wages sustained between these dates, you know,
4 I think the jury is probably going to look at that,
5 and if they were to find one or both of us liable,
6 they would put the same amount for both people
7 there, and then it may look like double damages,
8 essentially.

9 THE COURT: I'm glad you brought this up.

10 So yes. And we were having this
11 discussion back in chambers.

12 What we need to make sure is, in
13 post-verdict briefing, we make sure there is no
14 double recovery, right?

15 I don't know -- I don't know how to do
16 that other than hopefully the number is the same,
17 right? If it is different numbers, then we are
18 going to have an issue.

19 But presumably both numbers would be the
20 same, or nothing, right? And if they are the same
21 number, then it is capped at that number. Let's say
22 it is \$10,000, right? And the answer is \$10,000 for
23 both Union and Southwest. Then the recovery is
24 \$10,000. It can't be a double recovery because 20
25 would be double, right? In my mind?

1 The question is, if the number is
2 different, you know, if they say 8,000 for Southwest
3 and 2,000 for the Union, I'm not sure how they would
4 have gotten there and I'm not sure what to do about
5 it, right?

6 So I have thought this is the best we can
7 do, knowing that I will have to avoid a double
8 recovery on the back end. But I'm trying to figure
9 out if they can engineer a result that none of us
10 can figure out how they got there and how do undo
11 it.

12 Any bright ideas? I see the value in
13 breaking these things out, right? There could be a
14 recovery just from the Union, Southwest and not the
15 Union, or a recovery just from the Union and not
16 Southwest.

17 MR. McKEEBY: No bright ideas, just more
18 problems in the sense that, even if they do put one
19 number, then I guess there is a question of which
20 defendant pays.

21 THE COURT: Right. It is not tortfeasors,
22 but we would be talking joint and several liability,
23 if this were a tort case, right? And what is the
24 total recovery? Is it 10,000 or is it 20,000?

25 And in my view, if this were a tort case,

1 it would a \$10,000 recovery, with joint and several
2 liability.

3 If they both have been found liable, then
4 I think there can be a judgment. But then it would
5 be my duty to make sure there is not a double
6 recovery and a double satisfaction.

7 So in my view, I think the best we can do
8 is all know that there is the potential for an odd
9 result here, hope that the dollar signs are
10 consistent, matching up to the liability questions,
11 right? And then make sure that we avoid the double
12 recovery in post-verdict machinations.

13 Or we can go back to one damages question,
14 but then we have got other problems that we create
15 by one damages question to defendants.

16 MR. GREENFIELD: Would you entertain the
17 idea of some and give some -- and again, problems
18 not solutions? So I apologize. Some sort of
19 apportionment footnote question in there, if
20 you do -- you know, or maybe on the back end of all
21 the damage questions, if you found that both
22 Southwest and the Union are liable for the
23 discharge, and you have asserted damage to both,
24 which -- how much do you assert, you know,
25 which apportion -- you know, something -- I don't

1 know.

2 I'm spit-balling here, but just something
3 to potentially maybe on the back end and parse it
4 out.

5 THE COURT: And I think that would work,
6 but only if we wrapped it down into one damage
7 question. And if we've found liability for both and
8 one amount of damages, then what is a proportionate
9 responsibility, right?

10 But I don't even know that this can be a
11 proportionate responsibility case, right? I almost
12 think in a case like this -- like, let's say that it
13 is \$10,000 each. Unless I'm missing something, in a
14 case like this, she would have the ability to get a
15 judgment, \$10,000, but then only get one
16 satisfaction, right?

17 And so the first one to pay up is the
18 first one to pay up. And so it is actually an
19 enforcement of the judgment problem, not even a
20 judgment in how it reads problem, right?

21 I would know, I can see it is 20 grand.
22 But it is almost an enforcement of the judgment
23 problem.

24 So the problem -- so while I like your
25 idea, I think I can't impose a proportionate

1 responsibility context in a statutory violation case
2 that is not a negligence case with a proportionate
3 responsibility-staked overlay on it.

4 So I think I have got to give her a full
5 satisfaction, potentially from each defendant who
6 they found liable, up to the level of damages that
7 they found them responsible for. But she can only
8 ever get one complete satisfaction, even if there
9 are two judgments.

10 MR. GREENFIELD: Thank you.

11 THE COURT: Does anyone want to take issue
12 with my hunch here?

13 MR. PRYOR: I just -- no, I take issue
14 with the number used, but we agree with the
15 analysis.

16 THE COURT: I knew you would, Pryor.

17 But, I mean, it would be all easier if
18 this were a tort case, right? Because then we would
19 just have one damages question and a proportionate
20 responsibility and we would know exactly how to do
21 it. But a multi-defendant statutory damages case is
22 a different animal.

23 I think we have done it as best as we can.
24 I think we all know that we have a double recovery
25 issue waiting for us at the end of the day, assuming

1 that there is liability for both and there are
2 damages for both.

3 And that we may need to talk about this,
4 if there is a different calculation for each of the
5 two defendants. But it may actually be fine because
6 maybe then that is what the judgment looks like for
7 each defendant. We just have to figure out what the
8 dollar amount of the double recovery would mean.

9 MR. MORRIS: Your Honor, just thinking out
10 loud here a little bit is, if there were an
11 apportionment question there, then we would have the
12 information from the jury -- and maybe it becomes
13 unnecessary at some point, but at least we have it,
14 if it becomes necessary or relevant for some
15 question of apportionment or something.

16 MR. HILL: What? How would that come into
17 play?

18 THE COURT: If they picked different
19 numbers? If they found them both liable but said
20 Southwest was 8,000 and the Union, 6,000?

21 I don't know why they would do that. I
22 can't think of a good reason why they would pick
23 different numbers, as we sit here today.

24 All right. The best I can do is what we
25 have done so far, and then see what happens and hope

1 that they get consistent numbers, right? And if
2 they get consistent numbers, we can figure out
3 avoiding a double recovery on the back end. If they
4 get inconsistent numbers, then I may not release
5 them immediately, but I may send them back to the
6 jury room and we figure if we need to ask them a
7 follow-up question.

8 So I'm not saying we will never ask that,
9 but hopefully we won't need to.

10 MR. PRYOR: I guess I'm misunderstanding
11 what -- I thought you were going to submit one
12 damage question. If you submit two, I think it is
13 going to be very confusing for the jury for the very
14 reason you are stating.

15 Why are we stating -- it is the same
16 damage. It is the liability question is going to
17 determine who is responsible for the damage. And if
18 it is both, it is just as you have stated. But to
19 give two -- I have had this happen before. These
20 two damage questions, the jury ends up fighting
21 over, trying to split it between the two, and that
22 is not their issue, some thinking it is a double
23 recovery and they cut in half.

24 And then if they don't find liability for
25 both, she doesn't get both. I think it is -- if

1 that is what you are doing, I don't know if we said
2 we don't object. We do.

3 THE COURT: Understood.

4 Okay. So now we are back to the question
5 of do we lump it back into one damage question, and
6 then we use the liability questions to determine who
7 owes that amount of money.

8 If both are liable, then both owe that
9 amount of money, if those types of damages are
10 recoverable. I know you've got your lost pay
11 argument for the Union -- sorry -- front pay for the
12 Union.

13 But we break that out, right? So even if
14 there is a category that we treat differently, if
15 the Union is off for front pay, then we could still
16 figure out because there is a separate front pay
17 question.

18 So the question is now, are we back to one
19 damages question that doesn't identify which
20 defendant but which type of damages?

21 MR. GREENFIELD: We contend that the two
22 damages question is still better than the joint
23 damage question, but -- it may not be perfect, but I
24 think it is closer to the right direction to where
25 we want to be.

1 MR. MORRIS: Southwest agrees.

2 THE COURT: Agrees on two, instead of one?

3 MR. MORRIS: Yes.

4 THE COURT: So I think I may have talked
5 myself out of it though, now.

6 Yes. Looking at all of the types of
7 damage questions, my current thinking is the only
8 way to avoid the problem of the jury's inconsistent
9 answer on Southwest and the Union owing different
10 amounts of money for the same types of damages is to
11 send one damage question without identifying a
12 defendant and using the liability question to
13 determine if those damages are awardable against
14 that defendant.

15 MR. GREENFIELD: And I would contend that
16 that has greater risk of confusion and prejudice by
17 lumping them together, as opposed to splitting them
18 apart and potentially dealing with this other issue.

19 THE COURT: So I see your point, but I'm
20 not seeing how it would actually play it. Like, I
21 see how it plays out in the other context. They
22 start thinking who was more at fault, right? They
23 start implying a proportion of responsibility
24 context.

25 But they can't do that if it is one

1 question. If they found someone not liable, then
2 they are not liable. And whatever amount of damages
3 it is, they are not on the hook for.

4 MR. GREENFIELD: I actually think that it
5 is --there is a perfect example, and we can just
6 look at back pay.

7 We both could be found liable for the
8 termination under any one of the -- any number of
9 the statutes.

10 The jury could come back and say, yes, and
11 we, you know, tip the cap here -- you probably
12 understand that we will probably argue this -- but
13 that then we are not actually responsible for any of
14 the back pay damages. We are not her employer, we
15 didn't cause -- we fought to get her job back.

16 So even though we are liable, our back pay
17 should be zero. And if they are lumped together,
18 I'm going to be stuck with an argument about
19 splitting it with them and I don't want to do that.

20 MR. PRYOR: If, as a matter of law, they
21 are not responsible for the back pay, then you form
22 a judgment accordingly.

23 MR. GREENFIELD: If you would like to
24 stipulate that we are not possible for back pay, I
25 would be happy to go with that.

1 MR. PRYOR: Well, I'm not going to
2 stipulate -- what? No. The Court can ferret that
3 out.

4 THE COURT: I think I can ferret that out
5 in post-verdict briefing, right? If there is, as a
6 matter of law, if you are not on the hook for back
7 pay.

8 The question would be if there is some
9 sort of factual basis, not as a matter-of-law point,
10 the jury could find they are not on the hook for
11 back pay.

12 MR. GREENFIELD: And I'm not arguing from
13 a matter-of-law point. I'm arguing from a factual
14 point. And so I think if they are lumped back
15 together, then we absolutely have to have some sort
16 of apportionment because I think a jury could easily
17 find if we are both liable, for example, that the
18 Union is X, could potentially be much less.

19 Because, again, the different sort of
20 situation that we are in, that we actually -- and we
21 would argue -- even fought to get her her job back.
22 And ultimately, the decision was made by Southwest
23 Airlines to terminate her employment.

24 So if they are lumped together, then I
25 absolutely think we need some sort of apportionment

1 question. But I think the better way is to have
2 them split apart.

3 MR. PRYOR: I don't see it. I don't
4 understand that argument.

5 MR. HILL: It's like a joint-employer
6 case, where you get a joint and several judgment
7 from joint employers.

8 MR. GREENFIELD: We are not joint
9 employers.

10 MR. HILL: Well, that's fine, but I'm
11 using my analogy.

12 THE COURT: Well, and so what I will say
13 is, there is a universe in which the jury could say
14 the Union shouldn't have turned in her; however,
15 Southwest Airlines shouldn't have fired her, and so
16 the Union shouldn't be on the hook for her back pay,
17 right? Like, the Union should be on the hook for
18 some damages, but not the full extent of the back
19 pay. This is -- so --

20 MR. PRYOR: Okay. I'm having
21 difficulties -- but I guess if you submit a question
22 like that to the jury. But, okay. I mean, I give
23 up. I don't know what to do.

24 THE COURT: I think we all give up at this
25 point.

1 MR. PRYOR: There has got to be a way.

2 But submitting two damage questions,
3 unless you put something in there telling the jury
4 there is no double recovery, don't think about your
5 answers to -- I mean, I don't know.

6 Otherwise, it is going to -- I know two
7 damage questions will create confusion. This other
8 hypothetical issue, I -- it seems odd that a jury
9 could consistently find them liable for getting her
10 fired, but somehow think they are not liable for
11 back pay and Southwest is, as opposed to joint and
12 several.

13 It just seems like that is an issue that
14 the Court would ferret out and not the jury, but --

15 THE COURT: So now what I'm thinking
16 about, Mr. Pryor, is two questions, but actually
17 adding in the cautionary language you are flagging,
18 which is something along the lines of, the jury is
19 to award the full measure of damages it finds
20 attributable to each defendant. The Court will take
21 separate action to avoid any double recovery.

22 MR. PRYOR: If there is really that
23 concern, I guess so.

24 MR. HILL: So you still have the problem
25 of potentially inconsistent verdicts.

1 And because there is one set of damages
2 that is caused by the termination, regardless of who
3 did it, who caused it. If the Union caused it, she
4 still got terminated and the pay that she lost
5 between March 14th, 2017 and the date of trial is
6 the same, March 14th to the date of trial, that she
7 would have lost if Southwest had fired her. I mean,
8 it the same quantum. Having two questions just --

9 THE COURT: I get your point, but I'm not
10 necessarily in agreement with it. The jury could
11 say that Southwest is liable for the termination and
12 the Union is liable for its breach of duty of fair
13 representation. But there is no further liability,
14 and that the Union's damages are less than
15 Southwest's damages.

16 MR. PRYOR: Okay. If it is going to be,
17 you have to have two.

18 THE COURT: So in that case, if they
19 award, you know, 8 grand against Southwest and 6
20 against the Union, then we would have judgments that
21 say 8 and 6. But I would know that her recovery
22 can't exceed 8. Does that make sense?

23 MR. PRYOR: So if they are going to be
24 two, you will put the language in that says don't
25 worry about -- give the full measure of damages each

1 time and the Court will ensure -- now, they would be
2 worried about double recovery.

3 THE COURT: I agree with you, Mr. Pryor.

4 MR. PRYOR: And so that is actually the
5 way I would say it, the Court will ferret this out
6 and not permit a double recovery or something.

7 THE COURT: Okay. So give me 30 seconds.
8 I'm going to draft some language, and then I will
9 show it on the screen.

10 Okay. So the language I have proposed is
11 right under the questions about damages header:
12 "The jury should award whatever recoverable damages
13 it finds that Plaintiff Carter proved each defendant
14 caused. The Court will ensure that it avoids giving
15 Plaintiff Carter more than a full recovery of the
16 damages the jury finds that she proved."

17 I can't say "double recovery," because it
18 could be 1.3, 1.8. So it is the one satisfaction
19 rule is really what we are talking about, so --

20 MR. PRYOR: And I don't guess you can put
21 in, should the jury award damages in regard to
22 Southwest Airlines, so that they understand -- and
23 although maybe that same language in the Southwest
24 Airlines --

25 THE COURT: Well, should I say, should the

1 jury award damages as to both defendants, the Court
2 will ensure --

3 MR. PRYOR: Yes. Yes, that would be
4 great.

5 THE COURT: I think that is the best we
6 can do, is two separate questions with the caveat.

7 And then if we have to sort out
8 something -- you know, after we get a jury verdict,
9 everyone be looking out if there is something really
10 squirrely and we need to send them back for another
11 question.

12 Normally, I accept the verdict and cut
13 them loose. But we should all be on the lookout if
14 we need to not cut them loose for some kind of
15 inconsistent jury answer that we can't resolve as a
16 matter of law on the back end. Does that make
17 sense?

18 MR. PRYOR: And where are you going to be
19 on Thursday?

20 THE COURT: I will tell Judge Kinkeade,
21 look, man.

22 So does anyone want to object to the
23 overall structure about questions about damages with
24 the preamble language I have?

25 MR. GILLIAM: No objection from plaintiff.

1 THE COURT: We are just talking about the
2 preamble at this point and separate questions for
3 defendants. I know y'all wanted separate questions.

4 Is the preamble good enough?

5 MR. MORRIS: Yes, your Honor. I think
6 that works.

7 THE COURT: He said cautiously. We will
8 see how this plays out in the next few days.

9 Any issue with the language that you want
10 to take, Mr. Greenfield?

11 MR. GREENFIELD: No, your Honor.

12 THE COURT: Okay. And let's talk about
13 Question 13. Now we are back to 13.

14 MR. GREENFIELD: Just to the question in
15 and of itself for lost wages and damages against
16 back pay, I think there is insufficient evidence
17 that shows that we caused the termination of
18 Ms. Carter, and I believe the question itself to be
19 inappropriate.

20 THE COURT: Understood.

21 I will overrule that objection.

22 MR. GREENFIELD: Yes, your Honor.

23 MR. GILLIAM: Plaintiff has no objection.

24 THE COURT: Okay. So moving on to
25 Question 14.

1 MR. GREENFIELD: No objections, your
2 Honor.

3 THE COURT: Anything from Carter on
4 Question 14?

5 MR. GILLIAM: No objection.

6 MR. MORRIS: Nothing with Southwest.

7 THE COURT: Okay. 15, punitives.
8 Local 556?

9 MR. GREENFIELD: Yes, your Honor. We just
10 renew our objection regarding punitives that we made
11 earlier.

12 THE COURT: I understand that and overrule
13 it.

14 Any other objections on Question 15?

15 MR. GILLIAM: No objections from Carter.

16 THE COURT: All right. 16, the sum of
17 money.

18 Same objection to 16 as 15,
19 Mr. Greenfield, on punitives? It's just the dollar
20 amount on punitives?

21 MR. GREENFIELD: Oh, yes. Yes, your
22 Honor. I was just trying to follow -- I was
23 thinking it was the same thing, so I'm trying to --

24 THE COURT: Yes, sir. Okay. So I will
25 overrule that objection on your punitives argument

1 on 16.

2 MR. GILLIAM: No objection from Carter.

3 THE COURT: All right.

4 So that should take us to 17. Nominal
5 damages against 556 for Title VII claims.

6 MR. GREENFIELD: No objection, your Honor.

7 MR. GILLIAM: No objection.

8 MR. GREENFIELD: No objection to 18.

9 THE COURT: 18. Yes. We all know they
10 are supposed to write a dollar. If they write
11 anything else, I'm supposed to reform it, right?
12 Everyone is sort of on the same page?

13 I've seen a jury award 10 in state court
14 before, and that had to be reformed to a dollar.

15 MR. GILLIAM: No objection from Carter.

16 THE COURT: 19. Nominals for 556 for fair
17 representation. Any issue with Question 19?

18 MR. GREENFIELD: Your Honor, I would be
19 happy to skip all of the way down through 22 and say
20 no objections. I think they are all nominal damage
21 questions and we have no objection to them.

22 THE COURT: Understood.

23 Any issue before we get to 22 for Carter?

24 MR. GILLIAM: No.

25 THE COURT: So then 22 is the last

1 nominals question.

2 So 23, is that where we are at now?

3 MR. GREENFIELD: Yes, your Honor.

4 THE COURT: So front pay against Local
5 556.

6 MR. GREENFIELD: We would like to renew
7 our objections regarding front pay being
8 inapplicable to the Union. And we believe it is a
9 question for your Honor to decide, and there should
10 be some sort of jury advisory language, if it is
11 included.

12 THE COURT: Understood.

13 Do we need -- so on front pay, I don't
14 have a problem putting in more advisory language in
15 here. I know I have put it in the instructions that
16 it is advisory.

17 Any issue with me putting the disclaimer
18 in one more time here, that this is an advisory
19 question?

20 MR. GILLIAM: Yes. That's fine, your
21 Honor. We have no objection.

22 THE COURT: So I just said, "This is a
23 question for the Court on which the Court seeks the
24 jury's advice."

25 MR. GREENFIELD: Perfect. Thank you.

1 THE COURT: Any issue with that from
2 Carter?

3 MR. GILLIAM: No, your Honor. No
4 objection.

5 MR. HILL: I'd probably change the
6 spelling of "advice."

7 THE COURT: Advise and consent. Advice.
8 I got it wrong. Thank you. It is with a "c" now.

9 Okay. So 23, we've added the disclaimer
10 in the front.

11 How about 24? Now we are at Southwest
12 damages questions.

13 MR. MORRIS: I think we are good, your
14 Honor.

15 MR. GILLIAM: No objection.

16 THE COURT: Okay. 25. Non-economic,
17 Southwest, Title VII.

18 MR. MORRIS: Yes, your Honor. Just at the
19 end of the first question, it refers to the various
20 categories. And it says, "and other non-economic
21 losses, if any." I think that deviates from the
22 pattern instruction and should not be included.

23 THE COURT: All right. So it's that
24 phrase "and other non-economic losses, if any"?

25 MR. MORRIS: Yes.

1 THE COURT: Are there any other types of
2 non-economic losses?

3 MR. MORRIS: Excuse me?

4 THE COURT: Even separate and apart from
5 the patterns, are there any other types of
6 non-economic losses? I couldn't think of any in the
7 abstract, much less in the specific case.

8 So if anyone can fit something into that
9 category, I can see a reason to keep it. But if no
10 one can fit anything from this case into that
11 category, I'm not sure it is doing any work.

12 MR. GREENFIELD: Your Honor, we would just
13 ask that if you are going to the change the
14 instruction on that, then do it for us just so we
15 have some cohesiveness.

16 MR. MORRIS: And that repeats in the
17 Question 1 and Question 2 subparts, so I would just
18 ask that it be removed there as well.

19 THE COURT: Sure. So is Carter aware of
20 any type of damages in this case that are other than
21 non-economic damages not enumerated in the breakout
22 list in Question 25?

23 MR. GILLIAM: We are sitting here
24 pondering that, making sure that there are not -- I
25 think -- I don't think there are. I think that's

1 it.

2 THE COURT: All right. So I'm going to
3 make this conforming change. I will do it on this
4 screen, show y'all my work, and then I will go back
5 and do it on the Union.

6 So here is how 25 looks now.

7 MR. GILLIAM: No objections from
8 Plaintiff.

9 MR. MORRIS: None from Southwest.

10 THE COURT: Okay. Then I will go find --
11 so it is Question 14. Now Question 14 has the
12 conforming changes.

13 MR. GILLIAM: No objections from Carter.

14 THE COURT: All right. So let's go back
15 to 25. We fixed 25.

16 Now 26. Punitives, Southwest, Title VII.

17 MR. MORRIS: Your Honor, we object
18 because, one, we think this question is duplicative.
19 It is also 27.

20 THE COURT: So I thought 26 was the
21 predicate to 27. "Do you find that the legal test
22 was met for avoiding punitives" in 26, and in 27,
23 what dollar amount.

24 MR. MORRIS: I apologize.

25 MR. GREENFIELD: It is the same thing I

1 did. Don't worry.

2 THE COURT: No, it's fine. At this point
3 they are all running together with me too. So maybe
4 one of us can see straight at this point.

5 MR. MORRIS: I guess the only thing I
6 would say is this deviates a bit from the pattern
7 instruction about violating Ms. Carter's religious
8 rights. I think that's kind of incomplete and
9 confusing. I think we should just stick to the
10 pattern.

11 THE COURT: What was the pattern? Do you
12 have that language handy?

13 MR. MORRIS: It just says, "Do you find
14 that the plaintiff should be awarded punitive
15 damages?"

16 Maybe we could just say "for her Title VII
17 claims," if we need that clarification.

18 THE COURT: Any objection to changing to
19 punitives under Title VII?

20 MR. GILLIAM: Just I think making it
21 specific to what she can get punitive damages for.

22 MR. HILL: A jury isn't necessarily going
23 to know what Title VII -- I know it's all in the
24 instructions, but it's just a lot cleaner for them
25 if they understand, this is the one related to

1 religion.

2 THE COURT: So I see both of your points.

3 Right now "religious rights" is wrong
4 because it's the first time we've used that phrase,
5 right? We could use "religious observances,"
6 "practices," and whatever, "exercises." But we
7 can't use "religious rights." We can't start
8 changing terms on them now.

9 So I think at a minimum, we need to do
10 that. And the question is, do we drop it at Title
11 VII? I see your point on saying what it is. I
12 don't have a problem with that as long as we are
13 consistent.

14 MR. GILLIAM: Observances, beliefs, and
15 practices, whichever order. I know we switched up
16 the order.

17 THE COURT: That's our most common order.
18 "Observances, beliefs, or practices"
19 appears to be the most common.

20 Okay. So I'm going to replace "rights"
21 with "observances, beliefs, or practices."

22 So the way I currently have it.

23 MR. MORRIS: Your Honor, I guess it makes
24 it sound like there are sort of multiple categories
25 of things in here. I think there is just one thing.

1 And I think Title VII is used throughout the
2 instruction.

3 I don't know how Southwest violated her
4 observances or violated her rights or violated her
5 religion. I mean, that is not really the claim
6 here.

7 You know, you have one claim that she was
8 terminated for her religious belief; the other one
9 is that she wasn't granted an accommodation to
10 engage in it. So I think this is just not quite
11 accurate.

12 MR. McKEEBY: Something like
13 discriminating against Carter because of her
14 religious beliefs is more -- I think it better
15 relates. Because violating her religious
16 observances makes it sound like they tackled her on
17 her way to church or something.

18 THE COURT: Mr. McKeeby, I can get behind
19 your language for discriminating against Plaintiff
20 Carter's religious observances, beliefs, or
21 practices. I think that makes more sense than
22 violating.

23 MR. GILLIAM: Carter agrees with that.

24 THE COURT: Okay. Let me change the
25 wording up and see what I'm doing.

1 MR. GREENFIELD: And, your Honor, the same
2 deal. I would just ask for the language to track
3 for consistency's sake.

4 THE COURT: All right. Is that
5 language -- let's see this language first.

6 MR. HILL: Discriminating against
7 Plaintiff Carter for her religious.

8 THE COURT: So you say it's Carter,
9 apostrophe S?

10 MR. HILL: No. You lose the apostrophe S
11 and you say "Discriminating Plaintiff Carter for her
12 religious beliefs and practices."

13 MR. GILLIAM: If you are going to type it
14 out, it probably should be "because of." That's the
15 statutory language.

16 THE COURT: Now are we good?

17 It was wrong when we started, so I think
18 it is right now, but I'm not sure.

19 Okay. So --

20 MR. GREENFIELD: 15, I believe.

21 THE COURT: 15. That would make sense.
22 Here is how 15 looks now.

23 MR. GILLIAM: It looks like that will
24 carry down through 18, I believe.

25 THE COURT: Yes, you are right. Okay.

1 MR. GILLIAM: Hate to be the bearer of bad
2 news.

3 THE COURT: One good deed.

4 (Discussion off the record.)

5 MR. PRYOR: Your Honor, may I be excused
6 and allow these two gentlemen to handle this issue
7 very competently without me?

8 THE COURT: You may.

9 MR. PRYOR: Thank you.

10 MR. McKEEBY: I'm getting a similar
11 request from Ms. Jones and the Southwest contingent.
12 I assume that's okay.

13 THE COURT: Yes. The Court finds that
14 anyone who does not wish to be here can leave. I
15 figure that the familiar cast of characters will
16 remain the same.

17 MR. GREENFIELD: We are almost there.

18 THE COURT: Okay. I'm going to show you
19 how 15 through 18 to read.

20 So 15 now has this phrasing.

21 MR. GREENFIELD: It looks good, your
22 Honor.

23 THE COURT: 16.

24 MR. GREENFIELD: It looks good, your
25 Honor.

1 MR. GILLIAM: No objections from Carter to
2 15 or 16.

3 THE COURT: 17.

4 MR. GREENFIELD: It looks good, your
5 Honor.

6 MR. GILLIAM: No objection.

7 THE COURT: And lastly, 18.

8 MR. GILLIAM: No objection.

9 MR. GREENFIELD: Beautiful. Perfect.
10 Thank you.

11 THE COURT: Okay. Now, where were we?
12 Can y'all tell me what question we were on with
13 Southwest that caused all of that?

14 MR. MORRIS: 25.

15 MR. GREENFIELD: So 26, 27, and 28 should
16 all have the same.

17 THE COURT: So 26 is where it all started.

18 27 has got to change.

19 28 has got to change.

20 Give me one moment.

21 Okay. Do the changes we've just made have
22 an issue? There are multiple Title VII theories
23 that involve punitive damages. One of them is
24 termination, right? For religious exercises,
25 observances, beliefs. But failure to accommodate is

1 another theory, which is why my law clerk, who is
2 smarter than I am, put the broader term "religious
3 rights" in there.

4 So the question is, can we think of a way
5 to phrase it that doesn't foreclose in the jury's
6 careful attentive mind the accommodation and theory
7 for punitives and Title VII? Make sense?

8 So now let's look at the language again.

9 I have got 29 up.

10 MR. MORRIS: Your Honor, my original
11 proposal was just for violating Title VII, which
12 would incorporate both theories.

13 THE COURT: So you still don't like
14 "religious rights." You still like religious
15 something.

16 MR. GILLIAM: I like the language that you
17 have now, but I understand the issue and the
18 concern.

19 MR. GREENFIELD: Your Honor, as a
20 pragmatist over here, we could just pivot to the
21 pattern jury instructions.

22 MR. HILL: What if it's "What sum of money
23 should be assessed against Defendant Southwest as
24 nominal damages" -- that's predominant.

25 But "for discriminating against Plaintiff

1 Carter because of her religious observances" -- I'm
2 sorry -- because of -- "for discriminating against
3 Plaintiff Carter because of or failing to
4 accommodate her religious observances, beliefs, or
5 practices under Title VII."

6 THE COURT: Okay. It is even more
7 confusing because the jury is instructed about, with
8 the Union, not just terminate, attempt to terminate,
9 right? Because the Union can't terminate. So the
10 plot thickens even more.

11 What I'm going to suggest doing is going
12 back to the original language. I know you don't
13 like "religious rights." It serves a purpose, but
14 its purpose is not to confine it. It captures
15 everything.

16 So I'm going to go back to "religious
17 rights" for all of these and keep them worded the
18 way they were.

19 And now I will hear your objection -- I
20 will hear both of your objections if you object to
21 "religious rights" being in there instead of just
22 saying "Title VII."

23 MR. MORRIS: Sure. Yes. We object to
24 "religious rights" as being confusing and vague.
25 And also, we also just suggest that the Court adhere

1 to the pattern, just for the record.

2 THE COURT: Understood.

3 I appreciate that. I will overrule it and
4 stick to the original language, which I will put
5 back in as soon as I leave the bench, and then I
6 will send you a copy of it by email tonight.

7 Okay. So that's -- we've got through
8 Question 29. Are there any other objections to
9 Question 29?

10 MR. GILLIAM: No objections from
11 Plaintiff, your Honor.

12 MR. MORRIS: If we could just, at 28, the
13 pattern instruction doesn't have nominal damages on
14 Title VII.

15 THE COURT: So I guess we can talk through
16 what this would amount to be. If there is any
17 measure of actual damages, then we would not have
18 nominal damages, right?

19 So in my mind, nominal damages will only
20 come in if the jury thinks that there is liability
21 but that she had not proven actual damages.

22 Does everyone have the same understanding
23 of "nominal"?

24 MR. GILLIAM: Yes, your Honor.

25 THE COURT: So I get nominal damages

1 aren't in the patterns. I don't know that they are
2 anywhere in the patterns for any claim, right?
3 Nominals are when you don't prove damages with
4 certainty.

5 MR. MORRIS: I was saying we could remove
6 it, but I take your point.

7 THE COURT: I mean, I will say this,
8 nominals can also be handed by not sending a
9 question on nominals. And if the jury writes zero,
10 I re-form it to nominals at 1 in post-verdict
11 briefing. I've had a trial where that happened
12 before.

13 But I also have trials where they put in
14 nominals and they put in nominals -- you know, if
15 they awarded \$10,000 on actual and then a dollar on
16 nominals, I wouldn't award the dollar on nominals,
17 right? It is irrelevant at that point.

18 And so I just want to make sure everyone
19 is on the same page on what nominals serve a purpose
20 for, only if actual damages are nothing.

21 MR. GILLIAM: Yes, we agree.

22 THE COURT: Okay. So that's 28.

23 29 -- so we should be at 30.

24 MR. GILLIAM: No objection, your Honor.

25 MR. MORRIS: The only thing, I think this

1 is similar to our reform earlier about protected
2 activity on the Railway Labor Act versus exercising
3 rights. I think we reformed that in some prior
4 text.

5 THE COURT: We did and then we undid it
6 all, so I'm trying to figure out if there is a
7 variant of it that is --

8 MR. MORRIS: Okay. Did we? Maybe I've
9 forgotten. I thought we had adopted it.

10 THE COURT: That was Questions 26 through
11 28 as well. But maybe there was a separate question
12 where we just addressed it and not the Title VII
13 issue.

14 I thought it was for discriminating
15 against, but here it is a retaliation question,
16 so -- I thought it was a Title VII discrimination
17 claim we reformed it on earlier, but here I'm not
18 sure the same defect exists.

19 MR. MORRIS: I thought -- we are on 30,
20 correct?

21 THE COURT: Correct.

22 MR. MORRIS: Okay. I may be
23 misremembering, I thought we had changed it to "for
24 engaging in protected activity under the Railway
25 Labor Act" versus exercising her rights.

1 THE COURT: Does anyone know what question
2 we did that on?

3 MR. MORRIS: I don't. Because I think you
4 changed it in yours.

5 THE COURT: Question 8, I have as, "Has
6 Carter proved Southwest retaliated against Plaintiff
7 Carter for engaging in protected activity by the
8 Railway Labor Act -- for engaging in activity
9 protected by the Railway Labor Act?"

10 MR. MORRIS: Right. I was just saying
11 that would make it consistent with the other
12 questions, that was all.

13 MR. GILLIAM: We don't have any objection
14 to that.

15 MR. GREENFIELD: And then, your Honor, not
16 to be a pain, but for consistency's sake, if we are
17 going to change it here, we should change it in the
18 Union's questions as well.

19 THE COURT: I think it was a Union
20 question we had changed it in, but I will go back
21 and double-check.

22 So we are changing the phrase "for
23 exercising her rights under the Railway Labor Act"
24 to the phrase "for engaging in activity protected by
25 the Railway Labor Act." Correct? To make it

1 conform to 8?

2 MR. MORRIS: Yes. Whatever is in 8,
3 basically.

4 THE COURT: Here is how it looks.

5 MR. GREENFIELD: That is 21 for the Union.

6 THE COURT: It's 21?

7 MR. GREENFIELD: 22, actually.

8 Both.

9 THE COURT: Okay. Here is how 21 looks
10 like now.

11 MR. GILLIAM: No objection from Carter.

12 THE COURT: And 22 now.

13 MR. GILLIAM: Still no objection from
14 Carter.

15 THE COURT: Is the Union good?

16 MR. GREENFIELD: Yes, your Honor.

17 THE COURT: Okay. Where were we,
18 Question 30?

19 MR. MORRIS: Yes.

20 MR. GILLIAM: We had no other objections
21 to that question.

22 MR. MORRIS: And I think that language
23 about RLA-protected rights carries through to 31 as
24 well.

25 THE COURT: I think you are right.

1 So 31 now looks like this.

2 MR. GILLIAM: No objection.

3 MR. MORRIS: No objection for Southwest.

4 THE COURT: Okay. Question 32. Front
5 pay, Southwest.

6 MR. GREENFIELD: We just renew our
7 previous objections regarding front pay, your Honor.

8 THE COURT: Sure. But it is against
9 Southwest.

10 MR. GREENFIELD: Oh, I apologize.

11 MR. MORRIS: We make that same objection,
12 your Honor.

13 THE COURT: Awfully charitable of you, Mr.
14 Greenfield.

15 MR. GILLIAM: No objection.

16 THE COURT: So I need to put my advisory
17 caveat in front of this.

18 Here is how 32 looks now with the caveat.

19 "Advice" spelled correctly, Mr. Hill?

20 MR. HILL: It is indeed, your Honor.

21 THE COURT: Okay. So 32. I will overrule
22 that objection from Southwest, but I'm putting in
23 the advisory condition.

24 33, mitigation.

25 MR. GILLIAM: No objections.

1 MR. MORRIS: No objection, your Honor.

2 MR. GREENFIELD: None here, your Honor.

3 THE COURT: All right. And then 34?

4 MR. MORRIS: Your Honor, we would just
5 raise our objection that we don't have to show that
6 Ms. Carter would have earned anything if she ceased
7 looking for employment, that the damages should be
8 cut off from the day she did that.

9 THE COURT: I understand that objection.
10 I will overrule that.

11 MR. GREENFIELD: The Union echos that
12 sentiment.

13 THE COURT: Understood.

14 I will overrule that as well.

15 MR. GILLIAM: No objections from Carter.

16 THE COURT: All right. So I now need to
17 go back and undo the changes that I did to those
18 prior questions where we got caught in a tailspin
19 and I didn't see the forest through the trees.

20 So then we need to send y'all a clean copy
21 tonight that you can see. We will print it off
22 tonight. Look at it. If there is, like, a
23 scrivener's error or something that you think is
24 inconsistent with how I ruled, let me know as soon
25 as you can.

1 Because, for example, if we get here at --
2 I will ask for 8:45 tomorrow. I won't ask for 8:30
3 because we don't have plenty to cover tomorrow.

4 But if you've got some sort of error that
5 you found in the charge, not an argument of yours
6 that I have overruled, but like I did something
7 wrong based on what I told you I was doing, please
8 let us know by email because these things take
9 forever to print. And if we print something, it may
10 have a cascading effect.

11 So please let us know by email if there is
12 something you think we've missed. Hopefully, we
13 will be able to swap out a page and not have to
14 reprint the whole thing. But then I will try to
15 read it at 9, and then we will roll into closing,
16 closing, closing.

17 Make sense?

18 Again, I guess I need to figure out
19 tomorrow on closing if they are saving a small
20 modicum of minutes for the final word, right?

21 MR. HILL: We are indeed.

22 THE COURT: How many, do you know? I
23 should have asked Mr. Pryor before he left.

24 MR. HILL: Mr. Pryor will have a better
25 sense of that in the morning.

1 THE COURT: Yes. So I will tell you, in
2 the past, what I've done is I've let -- people tend
3 to reserve up to 10 minutes. People who have asked
4 for more, I initially used to let go, and then
5 they'd have new arguments they bring in a rebuttal,
6 and then we've got to unwind it and I give more time
7 to rebut the new information that came in.

8 So 10 minutes, I'm perfectly comfortable
9 with saving that time out of closing for the final
10 word.

11 I'll just reiterate, and if y'all can tell
12 Mr. Pryor, if you can save your objections for the
13 end of that argument, unless someone has blown
14 through a motion in limine, right? Stand up, look
15 at me, I will call a sidebar.

16 Otherwise, save your objections for the
17 end. I will call a sidebar after everyone is
18 closing and see if there is anything we need to
19 address.

20 Other than that, any questions?

21 MR. GILLIAM: No questions here.

22 THE COURT: I'm really glad I listened to
23 you, Mr. McKeeby, on not keeping the jury here,
24 because that would have been bad.

25 MR. MCKEEBY: You can answer a question

1 that I have, and that is when is the one time that a
2 photograph is not hearsay?

3 THE COURT: The one time a photograph --

4 MR. McKEEBY: Or is hearsay, I guess.

5 THE COURT: The one time a photograph is
6 hearsay is when a criminal defendant is accused of a
7 scheme involving withdrawing funds and there is a
8 photograph of them withdrawing funds at Western
9 Union. It is the proof of the matter asserted that
10 they were withdrawing funds. But it's also a
11 statement of the party, a party admission.

12 And so it is a hearsay exception, while
13 hearsay all at the same time.

14 I have had that happen before.

15 No, that was you in the Western Union
16 video. So it stays out under hearsay, it comes back
17 in under party statement.

18 Okay. Any other questions?

19 All right. I will see y'all tomorrow at
20 8:45, not 8:30. Good luck getting your closing
21 materials together tonight, and we will finish
22 strong and give it to the jury tomorrow.

23 All right. Court is in recess.

24 THE COURT SECURITY OFFICER: All rise.

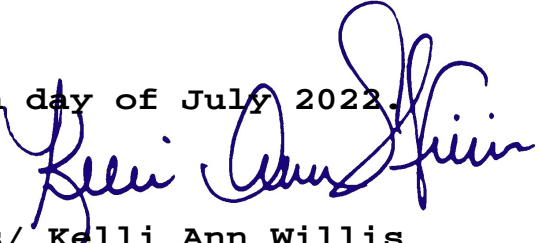
25 (Proceedings adjourned at 5:32 p.m.)

C E R T I F I C A T E

I, Kelli Ann Willis, RPR, CRR, CSR
certify that the foregoing is a transcript from the
record of the proceedings in the foregoing entitled
matter.

I further certify that the transcript
fees format comply with those prescribed by the
Court and the Judicial Conference of the United
States.

This 13th day of July 2022.


s/ Kelli Ann Willis
Official Court Reporters
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Dallas Division

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